

STANDARD CONTRACT FOR TECHNOLOGY SERVICES

1. **Parties.** This is a Contract for services between the State of Vermont, Department of Vermont Health Access (hereinafter called “State”), and Archetype Consulting Inc., with a principal place of business in Boston, Massachusetts, (hereinafter called “Contractor”). Contractor’s form of business organization is a Corporation. It is Contractor’s responsibility to contact the Vermont Department of Taxes to determine if, by law, Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. **Subject Matter.** The subject matter of this Contract is services generally on the subject of Business Intelligence and Reporting related to the State’s online health insurance exchange, Vermont Health Connect. Detailed services to be provided by Contractor are described in Attachment A.

3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$7,586,530.00.

4. **Contract Term.** The period of Contractor’s performance shall begin on July 1, 2020 and end on June 30, 2023. This Contract may be amended for one additional one-year period by agreement between the Parties.

5. **Prior Approvals.** This Contract shall not be binding unless and until all requisite prior approvals have been obtained in accordance with current State law, bulletins, and interpretations.

5A. **Sole Source Contract for Services.** This Contract results from a “sole source” procurement under State of Vermont Administrative Bulletin 3.5 process and Contractor hereby certifies that it is and will remain in compliance with the campaign contribution restrictions under 17 V.S.A. § 2950.

6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this Contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.

7. **Termination for Convenience.** This Contract may be terminated by the State at any time by giving written notice at least thirty (30) days in advance. In such event, Contractor shall be paid under the terms of this Contract for all services provided to and accepted by the State prior to the effective date of termination.

8. **Attachments.** This Contract consists of 66 pages including the following attachments which are incorporated herein:

- Attachment A – Statement of Work
- Exhibit I to Attachment A – Service Level Agreement
- Attachment B – Payment Provisions
- Attachment C – Standard State Provisions for Contracts and Grants

Attachment D – Other Terms and Conditions for Information Technology Contracts
Attachment E – Business Associate Agreement
Attachment F – Agency of Human Services Customary Contract/Grant Provisions

9. Order of Precedence. Any ambiguity, conflict or inconsistency between the documents comprising this Contract shall be resolved according to the following order of precedence:

- 1) Standard Contract
- 2) Attachment D
- 3) Attachment C
- 4) Attachment A with Exhibits
- 5) Attachment B
- 6) Attachment E
- 7) Attachment F

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

STATE OF VERMONT

DEPARTMENT OF VERMONT HEALTH ACCESS

CONTRACTOR

ARCHETYPE CONSULTING, INC.

E-SIGNED by Cory Gustafson
on 2020-06-29 20:09:00 GMT June 29, 2020

CORY GUSTAFSON, COMMISSIONER DATE
NOB 1 South, 280 State Drive
Waterbury, VT 05671
Phone: 802-879-5901
Email: Cory.Gustafson@vermont.gov

E-SIGNED by Jason Webster
on 2020-06-29 19:14:49 GMT June 29, 2020

JASON WEBSTER, PRESIDENT DATE
PO Box 2250
Hanover, MA 02339
Phone: 617-967-2669
Email: JWebster@archetypeconsulting.com

ATTACHMENT A SPECIFICATIONS OF WORK TO BE PERFORMED

1. PURPOSE

The subject matter of this Contract is services for the ongoing Information Technology (IT) Maintenance and Operations (M&O) of the State of Vermont's Vermont Health Connect (VHC) reporting system functionalities detailed in Attachment A, Section 5.1., the creation of certain documentation, including M&O Deliverables as set forth in Attachment A, Section 4.1.1.a, and other professional services as described herein (collectively, "Deliverables"). These M&O services and the Deliverables shall be referred to together herein as "Services". This Contract specifies the obligations of each party with additional provisions detailed in the attached Attachments and Exhibits.

2. EXISTING SYSTEMS.

The Department of Vermont Health Access (DVHA), Health Access Eligibility and Enrollment Unit (HAEEU) utilizes an Oracle software known as Oracle Business Intelligence Enterprise Edition (OBIEE) and Oracle Data Integrator (ODI). This Oracle software allows for reporting functionality on the VHC system.

The Oracle Data Integrator (ODI) is an extract, transform and load (ETL) tool produced by Oracle that offers a graphical environment to build, manage, and maintain data integration processes in business intelligence systems.

OBIEE is used by HAEEU for its data reporting needs including ad-hoc query generation and analysis, dashboard and scorecard generation and Online Analytical Processing (OLAP). The OBIEE data warehouse was originally established for HAEEU by the original build of VHC.

The current system provides reporting functionality on the following major workstreams: 1095A, 1095B, Centers for Medicaid and Medicare Services (CMS) Policy-Based Payment Reporting (PBPR), reconciliation, and operational reporting.

3. DEFINITIONS. Capitalized terms used in this Contract not specifically defined in the text shall have the following meanings:

- a. **"Certificate of Acceptance"** means written certification, delivered to Contractor and signed by an authorized representative of the State, stating that Design, Development and Implementation (DDI) projects have been delivered inclusive of all of applicable, agreed upon requirements and scope.
- b. **"CMS PBPR"** means CMS Policy-Based Payment Reporting. CMS has been working with both state-based health exchanges and participating carriers since 2016 to transition to a policy-based payment reconciliation and reporting process. This process includes but is not limited to the creation of SBMI, DDR and DDR+ files that are sent to CMS or carriers, and receipt and processing of SBMS, SBMR, EPS and PPR files from CMS. There are also correction and error processes associated with each file process.
- c. **"Contractor Personnel"** means and refers to Contractor's employees and employees of

Contractor's permitted subcontractors or permitted agents assigned by Contractor to perform Services under this Contract.

- d. **"Defect"** means any failure to conform in any material respect with applicable requirements.
- e. **"Documentation"** means any and all descriptions and specifications of the requirements included herein or created or developed hereunder, operational, reference guides, manuals and instructive materials, in whatever form and regardless of the media on which it may be contained, stored or transmitted, which is developed, prepared, used or otherwise available from Contractor and/or Contractor's suppliers, in connection with and applicable to the provision, use, operation and support of the Services hereunder. Documentation shall be sufficient to guide the State's use of the system and recent updates and shall also include all standards applicable to the Services, including those applicable to: (i) Contractor for its own comparable items or services; (ii) the State for its own comparable items or services; and (iii) such standards and guidelines as the parties mutually agree apply to the Services involved.
- f. **"Facilities"** means the physical premises, locations and operations owned or leased by the State (a "State Facility") or the Contractor (a "Contractor Facility"), and from or through which the Contractor and/or its permitted contractors will provide any Services.
- g. **"Go Live Date"** means the date that all or any part of DDI changes to Services is first available for use by the State in an operational, non-test environment, utilizing actual production data.
- h. **"Phases"** means a particular portion of DDI changes to Services, as set forth in the DDI project Schedule or as may be modified in accordance with this Contract. Unless modified by written agreement of the parties, the five DDI project Phases (Gap Analysis/Requirements Gathering, Cost Estimate Review/Approval, Development & Unit Testing, End User Testing & Acceptance, Deployment & Go Live, Training of End Users) will be performed, as agreed upon with the State, if the DDI effort resulted in changes to State executed reports or processes, and Maintenance and Support activities for Services, will be performed as part of project operations. The owner(s) of each Phase will be documented in the Project Charter for each specific DDI task.
- i. **"Services"** means the scope of work for Maintenance and Operations for VHC reporting system functionalities detailed in Attachment A, Section 5.1. and the creation of certain documentation, including M&O Deliverables as set forth in Attachment A, Section 4.1.1.a and other professional services described herein.
- j. **"Service Level"** means the specific level of performance Contractor is required to comply with and adhere to in providing the Services in conformity with the requirements, consistent with the criteria and parameters specified in this Contract. Service Level Terms are set forth in Exhibit 1 to this Attachment A of this Contract.

- k. **“UAT”** or User Acceptance Testing, means testing performed by the State of Vermont that occurs in a non-production environment to verify that updates, modifications, or a solution works for users.
- l. **“UVT”** or User Validation Testing means the process of evaluating software during or at the end of the development process to determine whether it satisfies the specified business requirement(s). This typically occurs in the production environment.

4. PROJECT MANAGEMENT

The scope of work as detailed below describes the Services, Deliverables and key assumptions.

Contractor shall develop project schedules that detail the tasks, timelines, and Deliverables for DDI activity. Any change management activities under this Contract will be conducted in accordance with the DVHA Portfolio Change Control Plan as published here:

<https://dvha.vermont.gov/administration/grants-and-contracts/dvha-portfolio-change-control-plan>.

Generally, the DVHA Portfolio Change Control Plan describes two mechanisms for implementing changes to the Contract or specifying the Services in greater detail: “Change Requests” and “Specification Orders.” Change Requests are generally used to modify overall Contract scope, schedule or budget and are given effect through a Contract amendment. Specification Orders are generally used to specify further definition and detail to work to be performed in furtherance of existing Contract Scope for which Contract funding is already provided and do not require a Contract amendment. The parties anticipate that specific DDI projects under Section 5.2 below will be defined, approved and implemented through Specification Orders.

4.1. CONTRACTOR PROJECT MANAGEMENT AND SUPPORT

4.1.1 CONTRACTOR PROJECT MANAGER

Contractor will designate resources to serve as the Contractor Project Manager(s) who will: (i) be senior employees within Contractor’s organization, with the information, authority and resources available to properly discharge the responsibilities required hereunder; (ii) serve as primary point(s) of contact and the point of accountability and responsibility for all Contract-related questions and issues and the provision of Services by Contractor; (iii) have day-to-day responsibility for, and authority to manage, State customer satisfaction; and (iv) devote dedicated efforts to managing and coordinating the Services.

Contractor Project Manager(s) shall be responsible for all tasks necessary to manage, oversee, and ensure successful delivery of Services. These tasks include documenting requirements, developing and updating plans, assigning staff, scheduling meetings, developing and publishing status reports, addressing project issues, risks, and change orders, and preparing presentations for the State.

Contractor Project Manager(s) shall be responsible for the successful delivery of all Contractor tasks and subtasks. Contractor will monitor progress and adjust plans, as necessary, in status meetings. The Deliverables (for both State and Contractor tasks) shall be updated by the Contractor, subject to review and approval of the State, and reports printed for each status meeting.

Contractor Project Manager(s) shall report to the DVHA HAEEU Deputy Director, or designee, if provided by written authorization by the State.

Contractor Project Manager(s) shall be responsible for developing and maintaining the following documentation:

a. M&O Deliverables:

Deliverable	Description	Update Frequency
DDI Change Control Log	Tracks all Specification Orders and Change Requests approved and their impact to the Contract scope, budget, and schedule.	As the Specification Order(s) or Change Request(s) goes through the process, the log is updated, then once the Specification Order or Change Request is finalized, it gets one final signoff.
Risk Log	A log of all risks (opened or closed) that could impact the existing system. Risks should be outlined by their impact and their potential to occur. All risks should have an owner.	When the risk is opened, it is logged and kept updated.
Requirements Documentation	Creation and continual improvement to match the existing system modifications of requirement documentation for Services. This includes business requirements, functional requirements, non-functional requirements, current State process flows, user stories, and business rules. Federal report aspects are to be prioritized over other Services.	Quarterly
Technical Design Document	Creation and continual improvement to match the existing system modifications of technical documentation for Services. Details the functionality, architecture and the “how” for Services in the existing system. This shall include but not be limited to details for created reports, database objects (tables, stored procedures, indexes, etc.) and ODI scripts. Document should be written in such a way that should the functioning code be damaged it could be recreated.	Quarterly
M&O Manual	Creation of and continual improvement of an M&O Manual, which when applicable, which will serve as an operator's instruction manual. It will include Services administration procedures and describe the operations of the production system. It will contain specific instructions on things an operator needs to do to manage the Services daily, descriptions of administrative tasks, instructions on how to run the job, and what to do in abnormal situations. This document shall become the property of State and shall be reviewed and approved upon completion.	Every 6 months
M&O Master Schedule	Details all ongoing development timelines, data warehouse load schedules, federal report submission timelines, and scheduled system and manual processes for Services.	This is a living document and is updated as necessary throughout the Contract. This will be provided to the State

		in Mid-Month and Monthly Status reports (as specified below).
Mid-Month Status Reports	Provides an update on the project health, accomplishments, upcoming tasks, risks and significant issues. The Status Report and the project color being report shall be developed in consultation with the State business lead and State Project Manager, as set forth in greater detail in Section 4.2.3.	The first business day on or following the 15th of each month
Monthly Status Reports	Provides an update on the project health, accomplishments, upcoming tasks, risks and significant issues over the past month. The Status Report and the project color being report shall be developed in consultation with the State business lead and State Project Manager, as set forth in greater detail in Section 4.2.3. It also details status towards meeting that month's SLAs defined in Attachment A, Exhibit 1.	The first business day of each month

b. DDI Deliverables:

Each DDI effort will have a Specification Order Deliverable and Certificate of Acceptance Deliverable. If a DDI scope of work includes other Deliverables they will be identified within the Specification Order as the level of documentation needed changes depending on the size, effort and impact of the DDI scope of work. If a Deliverable's description or update frequency differs from the below that will also be detailed within the Specification Order.

Deliverable	Description	Update Frequency
Specification Order	The Specification Order provides basic information about the project. It includes a: Scope Statement (what is in and out of scope); list of Project Deliverables; high level Project Timeline; Key Roles & Responsibilities; known Risks, estimated budget, Assumptions and/or Constraints. It should be signed off by the State before DDI work commences.	As needed to perform DDI scope
Project Management Plan	The Project Management Plan will dictate specifics on how the Contractor Project Manager will administer the project and will include the following documentation:	As needed depending on DDI scope
	1. Communication Management Plan (will dictate what will be communicated, to who, and how often)	
	2. Requirements Management Plan (will dictate the approach that the requirements will be gathered, approved, and maintained)	

	<p>3. Human Resources Management Plan (will dictate what resources will be assigned to the project, for how long, under what allocation, who they report to, and how to handle changes to the resource plan)</p> <p>4. Procurement Management Plan (will dictate how the vendor(s) will interact with the project and expectations regarding vendor relations with State resources)</p>	
Certificate of Acceptance	Describes the work completed as it was implemented, its associated acceptance criteria, any dates of importance, and monies invoiced for described work. This may differ from the scope designated within the Contract, Specification Orders, or change request as dictated by system and other restrictions. Changes in scope should be noted with an explanation as to why the change was made. Includes approval signature from Contractor and State.	Once
Formal Acceptance Sign Off	Obtain sign-off at the completion of each project deliverable as defined by the formal acceptance criteria.	Once for each project deliverable
Change Requests	Formal document used as necessary to modify overall Contract scope, schedule, or budget, and which is given effect through a Contract amendment.	Once for each Change Request
Change Control Log	Tracks all Specification Orders and Change Requests approved and their impact to the project scope, budget, and schedule.	As the Specification Order or Change Request goes through the process, the log is updated, then once the Specification Order or Change Request is finalized, it gets one final signoff.
Budget Log	Outlines original Contract costs by deliverable with billed and paid-to-date information.	Once for each project deliverable
Risk Log	A log of all risks (opened or closed) that could impact the project. Risks should be outlined by their impact and their potential to occur. All risks should have an owner.	When the risk is opened, it is logged and kept updated. Once the risk is closed, it is not reopened.
Action Items	A Log of open and resolved/completed Actions. Actions are something specific that a team member needs to complete to move a work task or product along.	When the action item is opened, it is logged and kept updated. Once the action item is complete, it is closed, and not reopened.

Decision Log	A log of all decisions made over the course of the project. Decisions should have a date and name of decider.	Once
Requirements Document	<p>Finalized list of the project requirements to be approved by the State. The approach is dictated by the Requirements Management Plan (see Project Management Plan), and may include:</p> <ol style="list-style-type: none"> 1) Stated requirements contain current State process flows, user stories, and business rules and states the business need at a high level. 2) Business requirements will be documented for each project, in addition to the required metrics for project success. 3) Functional requirements contain detailed requirements that can be handed off to the Contractor for execution. 	Should be final before a project starts and be kept updated in a Requirements Traceability Matrix (RTM). For each project, continual work toward documenting the existing system is critical. The vendor shall provide quarterly progress Deliverables of the documentation of the current system. Federal reporting is prioritized.
Technical Design Document	Details the functionality, architecture and the how of requirements implementation.	Should be final before a project starts and be kept updated in an RTM. For each project, continual work toward documenting the existing system is critical. The vendor shall provide quarterly progress of the documentation of the current system. Federal reporting is prioritized.
Test Plans	A description of the testing approach, participants, sequence of testing and testing preparations	Once per testing effort.
Test Cases & Results	The specific test cases to be tested and the testing results. Test Cases tie back to the project requirements (to ensure each one has been met). This also includes confirmation of updating the CMS Daily Test Summary Report for any integrated tested with the Federal Data Services Hub.	Create once then update with Results after testing.

DDI Schedules	The DDI schedules will be an ongoing tool for anticipating and tracking changes to expectations for all project tasks, Deliverables, and milestones. The DDI schedules will be an integrated plan – that is, it includes actions and Deliverables from all project areas – both Contractor and State. The complete DDI schedules, which include the detailed tasks and milestones, shall be shared in the ongoing communication meetings to discuss changes.	This is a living document and is updated as necessary throughout the Contract.
Project Status Reports	Provides an update on project health, accomplishments, upcoming tasks, risks, and significant issues. The Status Report and the project color being report shall be developed in consultation with the State business lead and State Project Manager, as set forth in greater detail in Section 4.2.2.	Weekly

Contractor Project Manager(s) shall assist the State’s Project Manager (upon request) in creating materials for periodic presentations to State project sponsors and key stakeholders. Contractor Project Manager(s) may be required to present information to, and answer questions from, State stakeholders at these presentations.

c. M&O DELIVERABLE REVIEW AND APPROVAL PROCESS

- i. Contractor shall submit Deliverable to the State for review.
- ii. The State shall have five (5) business days to review and approve the Deliverable, or to provide comments if the Deliverable is not acceptable.
- iii. During this five (5) business day period, the State may schedule and conduct a joint walkthrough of the Deliverable with Contractor so that Contractor can make real-time updates based on State feedback. At the conclusion of the walkthrough, the goal is to confirm that updates to the Deliverable are agreed.
- iv. If State provides comments to Contractor on or before the end of the five (5) business day period, Contractor shall have three (3) business days to incorporate comments and resubmit the Deliverable to State for electronic approval. Any comments after this point in the review process that are not directly related to either the original comments provided in step 2 above, or their updates as provided by Contractor in step 4, will be addressed in the next scheduled delivery of that Deliverable.
- v. If at the end of this five (5) business day period, the State has neither accepted, nor provided comments on the Deliverable, the Deliverable may be escalated.
- vi. The State will have two (2) business days to confirm that comments provided have been addressed and approve or disapprove the Deliverable. If the State fails to provide approval of the Deliverable, the Contractor and State shall endeavor to resolve any remaining issues within one (1) business day.

4.1.2 PROJECT MANAGEMENT AND SUPPORT

The Contractor will apply Project Management Institute’s (PMI) Project Management Body of Knowledge (PMBOK) principles to ensure on-time and within-budget delivery of the Services, while meeting all the requirements in this Contract. The State will approve all project management methods and tools used during each project. These project management methods and tools are considered project Deliverables.

4.1.3 KEY PROJECT STAFF

Contractor will perform and support the Services consistent with this Contract. Contractor Personnel will be properly educated, trained, and qualified for the Services they are to perform, and Contractor will put appropriate training in place to meet initial and ongoing training requirements of Contractor Personnel assigned to perform Services.

- a. Contractor shall be responsible, at its own cost and expense, for all recruitment, hiring, Contractor-specific training, education and orientation for all Contractor Personnel assigned or to be assigned to perform Services or support the requirements.
- b. All Contractor Personnel, in addition to any Contractor security policies and procedures, shall be required to comply with the security requirements in this Contract
- c. Contractor shall conduct its hiring process in compliance with all applicable federal and State laws to include, but not be limited to, anti-discrimination laws.
 - (i) **Eligibility for Employment:** Contractor shall verify that all prospective employees are eligible for employment in the United States.
 - (ii) **Criminal Records:** Contractor or an agent of Contractor shall perform criminal background checks on all prospective employees utilizing a national criminal database acceptable to the State. Before any Contractor Personnel begin work on the Services x) such background check shall have returned a “no record” result or, y) to the extent that the result revealed that a felony record or records exist for a given individual, the associated conviction(s) shall be unrelated to the work to be performed as specified under the Equal Employment Opportunities Commission’s EEOC Enforcement Guidance regarding the employment of convicted felons issued April 25, 2012. Contractor shall provide the State with notice of proposed Contractor Personnel with felony or misdemeanor convictions that involve a crime against a person; a crime involving the use or misuse of computer network; a crime involving weapons, explosives or arson; a crime involving trade secret/proprietary information; a crime involving theft, dishonesty, embezzlement, breach of fiduciary duty, identity theft, or other financial-related crimes; a felony conviction for drug possession; or a crime involving the distribution or trafficking of illegal drugs and/or controlled substances.
- d. All Contractor Personnel providing or assigned to provide Services or otherwise in a position to obtain or have access to State Information, shall execute a non-disclosure agreement in a form acceptable to the State.
- e. The timing for transfer, reassignment or replacement of Contractor Personnel will be coordinated with requirements for timing and other elements of the Services so as to maintain continuity in the performance of the Services and avoid interruption or disruption to the Services or any failures to maintain Service Levels.
- f. Contractor shall assign the following key roles to meet the requirements of this Contract:

Role	Responsibility
Project Manager(s)	Contractor Project Manager(s) shall be responsible for all tasks necessary to manage, oversee, and ensure successful delivery of Services. These tasks include documenting requirements, developing, and updating plans, assigning staff, scheduling meetings, developing, and publishing status reports, addressing issues, risks, and change

	orders, and preparing presentations for the State.
Business Analyst(s)	Will identify requirements across workstreams and identify substandard systems processes through evaluation of data. Serve as a lead for business process changes and will create and implement updated process documentation and workflow diagrams.
Architect	Overall architect for process improvement initiatives. Will evaluate current State architecture (within Contractor's scope) and provide process improvement solutions for State consideration. Responsibility for ongoing code and configuration suggestions and best practices across workstreams. Collaborate with developers to assure architectural solution can be suitably translated into effectual implementations. Architect will identify customer requirements, analyze alternatives, and conduct recommendations related to Contractor's code and tools.
Developer(s)/Technical Lead(s)	Responsible for the Maintenance and Operations tasks outlined in section 5. Will collaborate with stakeholders, Project Managers, Business Analysts and Architect to evaluate and implement process improvement and other DDI initiatives.

4.1.4 KEY PROJECT ROLE CHANGES

Contractor shall not change Key Project Role staff members without providing the State written notification, justification, and a comprehensive transition plan. The replacement of a Key Project Role staff member shall have comparable or greater skills and applied experience than the staff member being replaced and be subject to reference and background checks described above. If Contractor removes a Key Project Role staff member for any reason with or without the State's approval, Contractor agrees to replace the Key Project Role staff member within thirty (30) calendar days.

Notwithstanding the foregoing, the State acknowledges that project resources may become unavailable due to termination of employment for any reason, through disability or death, illness, or through leave of absence such as Family Medical Leave Act (FMLA) or National Guard duty for example. In such circumstances, Contractor shall promptly notify the State in writing of the impending or actual departure of any personnel and of the qualifications and identity of proposed replacement project resources.

4.1.5 CONTROL OF CONTRACTOR PERSONNEL

Contractor shall be fully responsible for the management, compensation, and performance of all Contractor Personnel, and the filing of any and all returns and reports and the withholding and/or payment of all applicable federal, State, and local wage tax, or employment-related taxes, including, but not limited to, income taxes, gross receipt taxes, taxes measured by income, social security taxes, and unemployment taxes for Contractor and Contractor Personnel. Notwithstanding the foregoing, Contractor Personnel shall adhere to the State's policies and procedures, of which Contractor is made aware while on State Premises and shall behave and perform in a professional manner. The State, may, in its reasonable discretion, require Contractor to remediate any Contractor Personnel, including but not limited to Key Project Roles, working hereunder who does not adhere to, behave, and perform consistent with the State's policies and procedures, or otherwise engages in unprofessional or unethical conduct, or abuses any illegal substance or alcohol, or engages in illegal activities or consistently underperforms. The State shall provide written notice to Contractor of the request of replacement, or with whom there are irresolvable personality conflicts, to which the Contractor will put forth best efforts to remediate any identified issues with identified Contractor Personnel. Contractor shall use reasonable efforts to promptly and expeditiously replace a project member staff and replace all other personnel within thirty (30) calendar days of receipt of the written notice unless otherwise mutually agreed. The State's right to request replacement of Contractor Personnel hereunder relates solely to the removal of individuals from work on this Contract with the State and does not create an employment relationship. Nothing in this Contract authorizes the State to direct the Contractor's termination of the employment of any individual.

4.2. PROJECT PLANNING

The State and Contractor Project Manager(s) will arrange for kick-off dates and procedures for managing a project – such as reporting status and resolving issues. This will provide an opportunity to introduce all key members of each project team and walk through the Project Management Plan and key milestones.

4.2.1. MEETING PROTOCOLS

For regular monthly status meetings, Contractor Project Manager(s) shall provide a meeting agenda and any handouts at least one business day in advance of the scheduled meeting.

4.2.2. PROJECT DOCUMENT STORAGE

The Contractor will establish a SharePoint site, or some other collaboration mechanism, that is accessible to the Contractor and the State. This will provide a common area for Contractor's project documents, artifacts, and Deliverables. Access to all SharePoint sites (or other medium of collaboration) and all project material contained therein shall be delivered to the State upon completion of the project.

4.2.3. STATUS REPORTS

Contractor Project Manager(s) shall provide project documentation and collaboration to meet the State's vendor reporting requirements. The status information shall include, at a minimum: all planned tasks accomplished for the reporting period, planned tasks that are incomplete, or behind schedule in the previous period (with reasons given for those behind schedule); all tasks planned for the upcoming period; an updated status of tasks (attached to the status report – e.g., percent completed, resources assigned to tasks, etc.); and the status of any corrective actions undertaken. The report will also contain items such as the current status of a project's technical progress; achievements to date; risk management

activities; unresolved issues; requirements to resolve unresolved issues; action items; problems; and significant changes to Contractor's organization or method of operation, to each project management team, or to the deliverable schedule, where applicable.

Each status report shall include a project dashboard at the top outlining the overall status of each project in terms of the standard triple constraint: cost, time, resources (using a legend or icon of green, yellow, and red based upon the following definitions):

- Green – on track to deliver committed scope by committed deadline with committed resources/funding.
- Yellow – not on track to deliver committed scope by committed deadline with committed resources/funding but have a plan to get back to green.
- Red – not on track and currently do not have a plan to get back to green. Need Project Management intervention or assistance.

In the event of yellow or red overall project status, there should be a specific task(s) and/or issue(s) identified as yellow or red which are the root cause of the overall project status being yellow or red. These items shall be presented in sufficient detail to determine the root-cause. The Status Report shall provide a link to the Risks and Issues Log for more detail.

5. SCOPE OF SERVICES.

5.1. M&O Tasks:

5.1.1. Technical Support for Operational Reporting and Business Operations (July 1, 2020 - June 30, 2022)

Contractor shall:

- i. Fulfill technical requests made by the State for reports or data to support report deployment, table updates and issue investigation.
- ii. Produce weekly business operations reports and assist with trouble shooting technical issues related to those reports.
- iii. Provide support for open enrollment related reports.
- iv. Perform ODI and OBIEE Repository Database ("RPD") development in support of report development. Development is the creation of code, protocols, fields or processes to drive a specific result or a specific report.
- v. All modified and newly created reports, database objects (tables, stored procedures, indexes, etc.) and ODI scripts will be documented in such a way that should the functioning code be damaged it could be recreated.
- vi. Assist with UAT of Operational Reporting execution and results.
- vii. Assist with UVT of Operational Reporting execution and results.

5.1.2. Managed Services – Data Warehouse and Nightly Load Monitoring/Stabilization (July 1, 2020 - June 30, 2023)

Contractor shall:

- i. Monitor, review, and report ETL metrics and reporting usage/performance metrics.
- ii. Using tools for which Contractor has provisioned access, investigate ODI Master Load issues. "Master Load" means the process by which all VHC production data and metadata is refreshed for use in federal and State reporting and other business operations.
- iii. Proactively triage new issues or trending performance bottlenecks.

- iv. Plan, organize, document, and provide support and assist with remediation efforts.
- v. Perform deployment paperwork preparation and deployment coordination with VHC and its hosting vendor.
- vi. Perform report monitoring, issue reporting and assistance in troubleshooting of “Top Used” reports such as the Paid Through Date, Data Integrity, ACCESS, and Recon reports.
- vii. Create and document data warehouse fields.
- viii. Utilize Microsoft SQL Server and ODI for supported processes.
- ix. Continue nightly load monitoring, tracking, triage, and maintenance with Contractor support available between the hours of 8:00 a.m. and 6:00 p.m. E.S.T. Monday through Friday. The State’s hosting vendor is responsible for executing the nightly load and incremental loads; Contractor monitors for load completion, run time, and the presence or absence of any issues requiring triage or maintenance. The State may require additional after-hour work which shall be supported as Contractor staff availability allows. Maintenance shall include activities that support data integrity, improve load performance of the ODI Master Load and Master Load runtimes. Contractor shall monitor all scenarios executed by the State’s hosting vendor in ODI until the Master Load completes. Contractor’s load maintenance activities do not extend to the Data Quality main load (“DQ Main”) which is the Programmatic Data Quality (“PDQ”) scheduled and executed separately from the ODI Master Load.
- x. Monitor reporting environment (data warehouse and Oracle tools) for hung threads and/or sessions and report to State for resolution. Contractor will alert the State’s hosting vendor and State stakeholders when a DQ Main experiences issues that can be easily identified by reviewing the load logs.
- xi. Assist with UAT of ODI Load process execution and results.
- xii. Assist with UVT of ODI Load process execution and results.

5.1.3. Internal Revenue Service (IRS) Form 1095A Reporting-related Tasks (July 1, 2020 - June 30, 2023)

Contractor shall:

- i. Set up and Configure system to enable the processing of Form 1095A data for plan years.
- ii. Assist with profiling plan year data to support the assessment of record submission readiness.
- iii. Develop logic to include/exclude records from the submission set for a specific submission period.
- iv. Generate and submit End-of-Month (“EOM”) Extensible Markup Language (“XML”) File to IRS (“IRS Monthly”). Intake of IRS and CMS response files; delivery of outcomes to the State and assistance with review and triage of outcomes.
- v. Perform 1095A initial noticing to customers and End-of-Year (EOY) XML File Submission to IRS for plan years:
 - 1. Execute noticing cycle batches.
 - 2. Assist with the review and curation of noticing batches.
 - 3. Assist with UAT noticing batch execution and results.
 - 4. Assist with UVT noticing batch execution and results.
 - 5. Stage notices (1095A Forms) for pickup by the State’s designated printer to enable printing and distribution to customers.
 - 6. Verify count of actual notice and reconciliation with expected count.
 - 7. Generate and submit EOY 1095A XML file to IRS (IRS 1095A Annual).
- vi. Perform 1095A Correction Processing for all plan years including:

1. Execute correction cycle batches, which may include new initial notice, void, and correction 1095A Forms.
 2. Assist with the review and curation of correction batches.
 3. Assist with UAT of correction batch execution and results.
 4. Assist with UVT of correction batch execution and results.
 5. Stage corrections (initial notice, void, and correction 1095A forms) for pickup by the State's designated printer to enable printing and distribution to customers.
 6. Verify count of actual notice and reconciliation with expected count.
 7. Generate and submit EOY 1095A XML files to IRS (IRS 1095A Annual).
 8. Generate and submit EOM 1095A XML files to IRS (IRS 1095A Monthly).
 9. Generate and submit monthly file to CMS (in parallel with IRS Monthly submission).
- vii. Intake IRS response files; deliver outcomes to the State and assist with review and triage of outcomes.
- viii. Fulfill requests made by the State and VHC to analyze and support resolution of 1095A exception cases.
- ix. Document progress and status of resolution of 1095A exceptional cases.

5.1.4. IRS Form 1095B Reporting-related Tasks (July 1, 2020 - June 30, 2023)

Contractor shall:

- i. Setup and configure system to enable the processing of Form 1095B data for plan years.
- ii. Assist with profiling plan year data to support the assessment of record submission readiness.
- iii. Develop logic to include/exclude records from the submission set for a specific submission period.
- iv. Perform 1095B initial noticing to customers and Annual XML file submission to IRS for plan years:
 1. Execute noticing cycle batches.
 2. Develop logic to include/exclude records from the submission set for a specific submission period.
 3. Assist with the review and curation of noticing batches.
 4. Assist with UAT of noticing batch execution and results.
 5. Assist with UVT of noticing batch execution and results.
 6. Stage notices (1095B forms) for pickup by the State's designated printer to enable printing and distribution to customers.
 7. Verify count of actual notices and reconciliation with expected count.
 8. Generate and submit of IRS Annual XML to IRS.
- v. Perform 1095B Correction Processing for all plan years including:
 1. Execute correction cycle batches, which may include new initial notice and correction 1095B forms.
 2. Develop logic to include/exclude records from the submission set for a specific submission period.
 3. Assist with the review and curation of correction batches.
 4. Assist with UAT of correction batch execution and results.
 5. Assist with UVT of correction batch execution and results.
 6. Stage corrections (initial notice and correction 1095B forms) for pickup by the State's designated printer to enable printing and distribution to customers.
 7. Verify count of actual notice and reconciliation with expected count.

8. Generate and submit IRS Annual file update to IRS.
- vi. Intake IRS response files; deliver outcomes to the State and assist with review and triage of outcomes.
- vii. Fulfill requests made by the State and VHC to analyze and support the resolution of exceptional 1095B cases.
- viii. Document progress and status of resolution of 1095B exceptional cases.

5.1.5. CMS PBPR related Tasks (July 1, 2020 - June 30, 2023)

Contractor shall:

- i. Setup and configure to enable the processing of plan years.
- ii. Assist with profiling plan year data to support the assessment of record submission readiness.
- iii. Develop logic to include/exclude records from the submission set for a specific submission period.
- iv. Assist with UAT of CMS PBPR execution and results.
- v. Assist with UVT of CMS PBPR execution and results.
- vi. Generate, submit, and accept SBMI file to CMS on a monthly basis.
- vii. Generate, submit, and accept DDR and DDR+ files sent to carriers.
- viii. Intake, validate, and process CMS response files, including but not limited to SBMS, SBMR, EPS, and PPR files; deliver outcomes to the State and assist with review, triage, and corrections to data mart based on the outcomes.
- ix. Fulfill requests made by the State and VHC to analyze and support resolution of CMS PBPR cases.
- x. Adhere to latest versions of CMS schemas for files related to the CMS PBPR process.
- xi. Iterative refinement of CMS PBPR files, interfaces, and process based on production results.

5.2.DDI Tasks

Tasks ordered by State and performed by Contractor under this section shall be implemented through one or more Specification Orders and in accordance with the project management requirements set forth in section 4 above.

5.2.1. General DDI Scope (July 1, 2020 - June 30, 2023)

State shall notify Contractor of revisions needed to 1095A and 1095B schema changes, Open Enrollment Report changes, CMS PBPR, and other State or federal requests.

- a. Once notified by the State, Contractor shall review and provide a Specification Order/Change Order and any of the following, as applicable:
 - i. Analysis of new federal DDI requirements related to any workstreams.
 - ii. Analysis of any State DDI requirements related to any workstreams.
 - iii. DDI of new requirements associated with any workstreams.
- b. The State will not pay for the effort involved in developing a Specification Order/Change Order. The Contractor shall bear the expense of estimating the cost or savings, time, and Contractor resources required to implement all Specification Order/Change Order requests from the State during a Project.

5.2.2. Migration Support Services DDI

Contractor shall perform migration support DDI Services as requested by State. With the understanding that the Contractor is targeted to complete the migration of ODI and OBIEE

reporting functionalities to version 12c in the Optum FISMA Environments (“OFE”) prior to July 1, 2020, any migration support DDI Services beyond July 1, 2020 shall be billed against the OFE Migration Contingency line item in Attachment B.

Contingency triggers include:

- Unknown OFE issues
- Rework triggered from unexpected data loss, environment configuration issues, environment instability, data connection loss, or other conditions unrelated to Contractor’s efforts
- Rework of existing Oracle or stakeholder identified OFE defects post cutover
- Timelines/milestones missed by the State or its vendors which impact Contractor’s ability to perform OFE contingency related activities
- Rework required to get OFE Master load performance back to Core performance levels
- Support of additional testing efforts related to OFE migration issues or defects – this includes support of State testing efforts as requested by the State
- Rework identified during or after cutover
- Updates to Contractor’s code due to uninstalled defect patches, untimely Oracle database updates/upgrades or other external factors
- Lost development, testing, or support time due to permissions issues during or after cutover
- Lost time due to environment(s) not being available
- OBIEE support due to limited State resources
- Assisting Optum with OFE Database support at Optum or State’s request
- State and/or Optum related extension or delay to OFE cutover
- Time spent researching OFE related Oracle bug fixes pre or post cutover
- OFE lower environment cutover activities
- OFE production cutover and stabilization phase support (5 weeks total)
 - The period of cutover support is:
 - One calendar week of UVT efforts in the production environment
 - The period of stabilization phase support is:
 - Four calendar weeks of stabilization support to monitor and resolve issues identified post cutover
 - The above time periods may be revised for cutover and stabilization phase support as required, as agreed upon in writing by the State and Contractor.

5.3. General Assumptions for Activities for July 1, 2020 - June 30, 2023

The following list describes the assumptions for M&O and DDI Activities to be performed by the Contractor.

- i. The maintenance of the OLAP server and tools are not considered in scope for this Contract. Maintenance of the “Archetype Remote Desktop” server and tools are not considered in-scope for this Contract. Upgrades to Oracle Data Integrator, OBIEE, and the reporting server are not considered in scope.
- ii. All environment / infrastructure management and configuration to be maintained by State’s Hosting/M&O vendor.

- iii. The State shall provide the environment and tools necessary for leveraging the State's payment processing vendor's "ALL DATA" file in ad-hoc and operational reporting. This should include access to a Microsoft SQL Server (Express or Full) environment and the ability to ETL the data into the Oracle Data Warehouse in the VHC Environment.
- iv. State shall define requirements, make policy decisions, and direct the development of Contractor's team. Contractor's success is based on the State's support and decisions. Important decisions around policy or requirements shall be made within ten (10) business days of the request for decision presented by Contractor.
- v. State shall ensure infrastructure, environment assistance, and access is provided for Contractor's activities.
- vi. State shall provide Contractor with the right to use the following State software for the Contractor to provide: Current version of MyAccess Support for Oracle, ODI Studio, OBIEE, SQL Developer, SoapUI, VM, Google Chrome, Internet Explorer 11, Microsoft Office (including Visio and Project), Secure FTP client (e.g. Winscp), Putty and/or MobaXTerm, Siebel Tools, RedHat operating system software, and any other State approved software in the Virtual Desktop Infrastructure (VDI) environment necessary for Contractor personnel.
- vii. State shall provide reasonable office space and facilities for Contractor personnel providing services on-site. Contractor shall provide their personnel with laptops that employ full disk encryption (FDE).
- viii. State shall provide remote-access capability via Citrix and Token, or other similar tools and technology.
- ix. Contractor recognizes that services performed under this Contract are vital to the State and must be continued without interruptions and that, upon Contract expiration, a successor may continue them. Contractor shall exercise reasonable efforts and cooperation to assist with an orderly and efficient transition to a successor. If State requests specific transition services, Contractor will negotiate in good faith with State to define detailed transition scope and budget, and to amend the existing Contract to enable the fulfillment of that scope.

6. ADDITIONAL PROVISIONS.

6.1. Project Warranty and Options.

The Contractor shall, at a minimum, provide State access to all work products. All work products shall meet the tools and functionality requirements of the State set forth in Exhibit 1 to this Attachment A. Contractor shall maintain existing system development and configuration control methodologies for DDI and M&O work.

6.2. State-Caused Delays.

Contractor acknowledges that the State may not be able to meet the time frames specified or that the State may determine that it is necessary to delay and/or modify the timing and sequencing of an implementation. While the State is committed to using reasonable efforts to provide staff and resources necessary to satisfy all such time frames, the State shall not be held responsible or deemed in default for

any delays in implementation provided the State uses its reasonable efforts to accomplish its designated responsibilities and obligations. In addition, the State may, at its option, delay deployment. Notwithstanding any provision to the contrary, if the State significantly delays implementation of a deployment, either party may make a Specification Order or Change Order for new DDI work and, if required, an amendment to this Contract. Contractor agrees to adjust Payment Milestones deadlines to take into account any State-caused delays; provided, however, that Contractor shall continue to perform any and all activities not affected by such State-caused delay. In the event of a State's adjustment Contractor scheduling conflicts or personnel unavailability, the State and Contractor shall prepare a revised mutually agreeable schedule which may delay the commencement and completion dates of each project and shall take into consideration the readjusted time frames and any necessary resequencing of the activities. Such readjustment, rescheduling or modification of a project shall be at no additional cost to the State if the delays are less than or equal to thirty (30) calendar days. For purposes of this Section, a "Significant Delay" shall mean any delay that will cause a slippage of thirty (30) calendar days or more in a Go Live Date.

6.3. DDI ACCEPTANCE

6.3.1. DDI Acceptance Testing by the State Following Implementation. After Contractor provides written notice to the State that it has completed a Phase of the a DDI project, the State shall, in accordance with the Formal Acceptance Criteria agreed by the parties, and with full cooperation and assistance from Contractor, conduct all such inspections and tests of the Phase as the State may deem necessary or appropriate to determine whether any defects exist in the Phase as implemented and whether the Phase as installed materially complies with all of the Installation Test Specifications and Phase specifications as set forth in the requirements and detailed DDI schedules. Such inspections and tests shall be over a duration mutually agreed upon by the State and Contractor, per Phase, from the date a notice of completion is issued (the "Acceptance Period"). Contractor shall correct all Defects during the Acceptance Period, demonstrate to the State that correction of such Defects has been made, and after so demonstrating correction, shall issue to the State a written notification indicating that no Defects are known to exist in the Phase and/or DDI change. The State shall be deemed to have accepted and approved the particular Phase or DDI change only upon the State's delivery to Contractor of a signed, written Certificate of Acceptance indicating that the Phase or the DDI change, as the case may be, as completed, materially performs in accordance with the requirements.

If at the end of the Acceptance Period, the State has not issued a signed Certificate of Acceptance to Contractor for that Phase or the DDI change, the State may, in its sole discretion, extend the Acceptance Period; provided, however, that the State shall respond within five (5) business days of a written request by Contractor issued after the end of the original Acceptance Period to provide Contractor with the State's status of approval or disapproval for that Phase or the DDI change. Any rejection must be in writing and specify the reason for the rejection and must be based upon the continued existence of a Defect in the Phase or DDI change or failure of the Phase or DDI change to materially perform in accordance with the requirements. The Certificate of Acceptance shall not be unreasonably withheld by the State. If a Certificate of Acceptance for a Phase or the DDI change is signed and delivered by the State, Contractor shall sign said Certificate, with both parties receiving a copy thereof.

7. THIRD PARTY COOPERATION

The State may hire other independent contractors, to assist with a project. Contractor shall cooperate with

the State and the third party, including provision of: (i) written Documentation requested by the State, including Attachment C Subcontractor requirements and Attachment G Subcontractor Compliance Form; (ii) commercially reasonable assistance and support services to such third party; and (iii) reasonable access to Contractor as necessary for such third parties to perform their work. The State shall use reasonable efforts to require such third parties to comply with Contractor's reasonable requirements regarding confidentiality, operations, standards, and security. Contractor shall support and maintain such third-party work product, provided the service provider complies with any Documentation applicable to Contractor in respect of services involved.

Attachment A – Exhibit 1 SERVICE LEVEL AGREEMENT

This Exhibit 1 to Attachment A describes the Service Levels that the Contractor shall meet in performing the scope of work detailed in Attachment A for the State and the remedies that apply in the event Contractor fails to achieve one or more of them.

This document outlines the Service Levels for the following scopes of work detailed in Attachment A in a production environment.

Effective from the date of the cutover from the existing production environment into the Optum FISMA Environment (OFE) production environment, a system “stabilization phase” shall be in effect for a period of four (4) calendar weeks, after which the OFE migration shall be complete. This stabilization phase will allow the Contractor to focus on stabilizing the application in the new OFE environment. During the stabilization phase, Service Level data may be unavailable and Service Level reporting may be delayed. Contractor shall continue to monitor all Service Level metrics and shall endeavor to meet and report on Service Level performance based on the data available. Maintenance and Operation (M&O) Service Levels and processes will not remain in effect during the stabilization phase.

1. Definitions

- 1.1. **Due Date** – the calendar date deadline set by the Internal Revenue Service (IRS) for which a 1095A, 1095B, or SBMI federal report is required to be transmitted to the Centers for Medicare and Medicaid Services (CMS) or the IRS, as applicable.
- 1.2. **Load Time** – the amount of time it took for a Successfully Completed Oracle Data Integrator (ODI) load process to complete.
- 1.3. **Successfully Completed** – Entire incremental or full master load ODI process was executed without an unsurpassable error, and the resulting data updates from ODI load completion are usable for reporting functions (i.e. not corrupted or partial data).
- 1.4. **Successfully Submitted** – Federal report accepted for processing by the appropriate federal entities, and if applicable, includes required corrections from the prior submission.

2. 1095A Federal Reporting Service Level

Each year the IRS requires 1095A End of Month (EOM) and End of Year (EOY) files be Successfully Submitted by specific Due Dates. Contractor shall achieve Successful Submission by the Due Dates. These Due Dates are typically between January and June of each year but are subject to be delayed by notification of the IRS.

2.1 Prior Year Data

The 1095A Due Dates for calendar year 2020 for reference were:

- 1.1.a 1095A EOY report was due to the IRS by 1/31/2020.
- 1.1.b 1095A EOM report was due to the IRS by the 15th of every month while reporting, from January until December.

2.2 Service Level Prerequisite Criteria

If significant 1095A schema changes are required by the IRS that are beyond the scope of M&O updates defined in Section 5.1. in Attachment A, then Design, Development, & Implementation

(DDI) work must be agreed to and commenced as part of Section 5.2. in Attachment A for the calendar year submission dates otherwise this Service Level is not effective until remediated.

2.3 Service Level Details

Service Level Credit	10% reduction of the monthly fee for IRS Form 1095A Reporting-related Tasks (M&O Task 5.1.3) invoiced for each 1095A federal report that was not Successfully Submitted by its Due Date during that month.
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3. **1095B Federal Reporting Service Level**

Each year the IRS requires 1095B EOY file be Successfully Submitted by a specific Due Date. Contractor shall achieve Successful Submission by the Due Date. This Due Date is typically between January and March of each year but are subject to be delayed by notification of the IRS.

3.1. Prior Year Data

The 1095B Due Date for calendar year 2020 for reference was:

1.1.a 1095B EOY report due was 3/31/2020 based on an extension provided by the IRS.

3.2. Service Level Prerequisite Criteria

If significant 1095B schema changes are required by the IRS that are beyond the scope of M&O updates defined in Section 5.1. in Attachment A, then DDI work must be agreed to and commenced as part of Section 5.2. in Attachment A for the calendar year submission date otherwise this Service Level is not effective until remediated.

3.3. Service Level Details

Service Level Credit	10% reduction of the monthly fee for IRS Form 1095B Reporting-related Tasks (M&O Task 5.1.4) invoiced for the 1095B EOY federal report not Successfully Submitted by its Due Date during that month.
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4. **CMS PBPR Federal Reporting**

Each year CMS requires that a CMS Policy-Based Payment Reporting (PBPR) SBMI federal report be Successfully Submitted by specific Due Dates. This Due Date is typically the 10th of each month. Contractor shall achieve Successful Submission by the Due Dates.

4.1. Prior Year Data

The CMS PBPR Due Dates for calendar year 2019 for reference were:

1.1.a Submission of the SBMI federal report by the 10th of each month, with any needed corrections from the prior month submission present.

4.2. Service Level Prerequisite Criteria

If significant CMS PBPR schema changes are required by CMS that are beyond the scope of M&O updates defined in Section 5.1. in Attachment A, then DDI work must be agreed to and commenced as part of Section 5.2. in Attachment A for the calendar year submission dates otherwise this Service Level is not effective until remediated.

4.3. Service Level Details

Service Level Credit	10% reduction of the monthly fee for CMSBPBR related Tasks (M&O Task 5.1.5) invoiced for the SBMI federal report not successfully submitted by its Due Date during that month.
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5. **Nightly Load Performance**

Successfully Completed ODI master and incremental loads are required for federal and operational reporting functionality to be current and accurate. Contractor shall Successfully Complete ODI master and incremental loads.

5.1. Target Monthly Load Performance Goals

The State and the Contractor will develop target Monthly Load Performance Goals for both the Open Enrollment and Renewal period (October through December) and between the months of January and September. The goals should be established and agreed upon for both periods by August 1, 2020. The goals will be established using historical trends, OFE load metrics and operational needs and will include both number of Successfully Completed loads per month and average Load Times per month. These metrics will be formally documented and stored on the State's SharePoint site.

5.2. Service Level Prerequisite Criteria

5.2.a This Service Level shall not be in effect until April 1, 2021. The effective date is to allow for agreed upon DDI process improvement work as part of Section 5.2. in Attachment A for Nightly Load improvements to be implemented. The effective date maybe moved to a later date with prior written approval from the State.

5.2.b If significant ODI Load Changes are required due to project work that greatly modifies the system (i.e. Premium Processing Project) that are beyond the scope of M&O updates defined in Section 5.1. in Attachment A, then DDI work must be agreed to and commenced as part of Section 5.2. in Attachment A and this Service Level is not effective until updated performance goals and a new effective date are established. The performance goals can be revisited as agreed upon by the State and the Contractor annually, or as required by the State and the Contractor based on mutual agreement.

5.3. Service Level Details

Service Level Credit	15% reduction of the monthly fee for Managed Services – Data Warehouse and Nightly Load Monitoring/Stabilization (M&O Task 5.1.2) invoiced if the following occurs in any given month: <ul style="list-style-type: none">• Data load execution does not meet the established Target Monthly Load Performance Goal
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6. **Service Level Credits Methodology**

This section describes the methodology for calculating Service Level credits which will be awarded to the State by the Contractor in the event the Contractor fails to meet the agreed upon Service Levels described above.

Service Level Credits: Contractor's monthly Service Level report shall include information on any Service Level default(s) and corresponding Service Level credit(s). Contractor shall automatically provide service level credits. If Contractor fails to do so, within 90 days of State's receipt of the applicable Service Level report, State may elect to claim a Service Level credit by issuing a written notice to Contractor. If more than one Service Level default has occurred within a single month, the sum of the corresponding Service Level credits may be claimed by State.

Service credits credited here under shall not be deemed a penalty, but rather a cost adjustment attributable to the lower level of Service delivery. Contractor acknowledges and agrees that services delivered hereunder which do not meet the Service Levels set forth herein have inherently less value for the State and the Service Level Credits represent a fair value for Services actually delivered; provided, however, the State shall retain all of its remedies in law subject to the Contractor's actual limitation on damages as set forth in this Contract, Attachment D.

6.1 Excused Performance. To the extent that any Service Level default is solely attributable to the following, then in any case, the corresponding Service Level default shall be excused, either entirely or partially. To the extent that any Service Level default is partially attributable to the following, then in any case, the proportion at which was partially attributable to the corresponding Service Level default shall be excused with respect to that Service Level:

1. Anything outside the scope of Contractor's responsibility for scope of work defined in Attachment A is excluded from any Service Level.
2. A State delay in responding to a request for approval.
3. A Force Majeure Event; except that a Force Majeure Event shall not excuse, delay or suspend Contractor's obligation to invoke and follow its Business Continuity Plan, Disaster Recovery Plan or any other business continuity or disaster recovery obligations set forth in this Contract in a timely fashion.
4. A default by State, a Third-Party Vendor of State or any other third party (excluding Third Party Vendors provided by Contractor or other third parties engaged by Contractor)) which directly prevents Contractor from meeting the applicable Service Level.
5. Hosting services.
6. External system availability.
7. Acts or omissions of State, a State Third Party Vendor or other third party (excluding Third Party Vendors provided by Contractor or other third parties engaged by Contractor in relation to these or any other services provided under an agreement with the State).
8. The failure of the State or a State Third Party Vendor other than the Contractor related to their performance of any disaster recovery obligations in a timely fashion including where that Third-Party Vendor is the Contractor under a separate hosting services contract.
9. The State provides written approval for a specific occurrence of failure to meet a Service Level.

ATTACHMENT B PAYMENT PROVISIONS

The maximum dollar amount payable under this Contract is not intended as any form of a guaranteed amount. The Contractor will be paid for products or services delivered or performed, as specified in Attachment A, up to the maximum allowable amount specified on page 1 of this Contract.

1. Prior to commencement of work and release of any payments, Contractor shall submit to the State:
 - a. a certificate of insurance consistent with the requirements set forth in Attachment C, Section 8 (Insurance), and with any additional requirements for insurance as may be set forth elsewhere in this Contract; and
 - b. a current IRS Form W-9 (signed within the last six months).
2. Payment terms are **Net 30** days from the date the State receives an error-free invoice with all necessary and complete supporting documentation.
3. Contractor shall submit detailed invoices itemizing all work performed during the invoice period, including the dates of service, rates of pay and hours of work performed or fixed price amounts, Task references, and any other information or documentation appropriate and sufficient to substantiate the amount invoiced for payment by the State. All invoices must include the Contract number for this Contract.
4. Invoices shall be submitted to the State at: AHS.DVHAInvoices@vermont.gov
5. EXPENSES: The fee for services shall be inclusive of Contractor expenses.
6. DDI Billing expenses will be paid in accordance with the State-approved Project Charter. The State will not reimburse the Contractor for any time spent developing a Project Charter.
7. Budget Table:

Budget Table Year One July 1, 2020 - June 30, 2021					
Task #	Work Stream	Annual	Monthly	Hourly Rate	Type
1	Business Operations Technical Support - Technical Support for Operational and Business Operations (M&O Task 5.1.1)	\$126,750.00	\$10,562.50		M&O
2	Managed Services – Data Warehouse and Nightly Load Monitoring/Stabilization (M&O Task 5.1.2)	\$380,250.00	\$31,687.50		M&O
3	IRS Form 1095A Reporting-related Tasks (M&O Task 5.1.3)	\$507,000.00	\$42,250.00		M&O

4	IRS Form 1095B Reporting-related Tasks (M&O Task 5.1.4)	\$380,250.00	\$31,687.50		M&O
5	CMS Policy-Based Payment Reporting (“CMS PBPR”) related Tasks (M&O Task 5.1.5)	\$633,750.00	\$52,812.50		M&O
6	Documentation (Deliverables outlined in Section 4.1.1)	\$149,760.00	\$12,480.00		M&O
7	Design, Development, and Implementation (“DDI”) Tasks (DDI Task 5.2.1)	\$1,443,000.00		\$195.00	DDI
8	OFE Migration Support Contingency as outlined in section 5.2.2	\$400,000.00		\$195.00	DDI
	Total M&O	\$2,177,760.00			
	Total DDI	\$1,843,000.00			
	Total	\$4,020,760.00			

Budget Table Year Two July 1 2021 - June 30 2022					
Task #	Work Stream	Annual	Monthly		Type
1	Business Operations Technical Support - Technical Support for Operational and Business Operations (M&O Task 5.1.1)	\$60,840.00	\$5,070.00		M&O
2	Managed Services – Data Warehouse and Nightly Load Monitoring/Stabilization (M&O Task 5.1.2)	\$253,500.00	\$21,125.00		M&O
3	IRS Form 1095A Reporting-related Tasks (M&O Task 5.1.3)	\$380,250	\$31,687.50		M&O
4	IRS Form 1095B Reporting-related Tasks (M&O Task 5.1.4)	\$253,500.00	\$21,125.00		M&O
5	CMS Policy-Based Payment Reporting (“CMS PBPR”) related Tasks (M&O Task 5.1.5)	\$507,000.00	\$42,250.00		M&O
6	Documentation (Deliverables outlined in Section 4.1.1)	\$74,880.00	\$6,240.00		M&O
7	Design, Development, and Implementation (“DDI”) Tasks (DDI Task 5.2.1)	\$360,750.00		\$195.00	DDI

	Total M&O	\$1,529,970.00			
	Total DDI	\$360,750.00			
	Total	\$1,890,720.00			
Budget Table Year Three July 1, 2022 - June 30 2023					

Task #	Work Stream	Annual	Monthly		Type
1	Business Operations Technical Support - Technical Support for Operational and Business Operations (M&O Task 5.1.1)	\$ -	\$ -		M&O
2	Managed Services – Data Warehouse and Nightly Load Monitoring/Stabilization (M&O Task 5.1.2)	\$253,500.00	\$21,125.00		M&O
3	IRS Form 1095A Reporting-related Tasks (M&O Task 5.1.3)	\$380,250.00	\$31,687.50		M&O
4	IRS Form 1095B Reporting-related Tasks (M&O Task 5.1.4)	\$126,750.00	\$10,562.50		M&O
5	CMS Policy-Based Payment Reporting (“CMS PBPR”) related Tasks (M&O Task 5.1.5)	\$507,000.00	\$42,250.00		M&O
6	Documentation (Deliverables outlined in Section 4.1.1)	\$46,800.00	\$3,900.00		M&O
7	Design, Development, and Implementation (“DDI”) Tasks (DDI Task 5.2.1)	\$360,750.00		\$195.00	DDI
	Total M&O	\$1,314,300.00			
	Total DDI	\$360,750.00			
Total		\$1,675,050.00			

Total Three-Year Budget	
Total M&O – July 1, 2020 - June 30, 2023	\$5,022,030.00
Total DDI – July 1, 2020 - June 30, 2023	\$2,564,500.00
Total Cost July 1, 2020 - June 30, 2023	\$7,586,530.00

8. Billing Assumptions:

- i. Contractor shall invoice a Monthly Fee for the term of the Contract for Lines 1-6 in year One and Two and Lines 2-6 in Year Three (excludes Task 1 for Year Three).
- ii. Contractor shall bill to a maximum of 7400 hours @ \$195 per hour from July 1, 2020 – June 30, 2021 for Line 6
- iii. Contractor shall bill to a maximum of 2051 hours @ \$195 per hour from July 1, 2020 – June 30, 2021 for Line 7
- iv. Contractor shall bill to a maximum of 1850 hours @ \$195 per hour from July 1, 2021 – June 30, 2022 for Line 6
- v. Contractor shall bill to a maximum of 1850 hours @ \$195 per hour from July 1, 2022 – June 30, 2023 for Line 6

**ATTACHMENT C: STANDARD STATE PROVISIONS
FOR CONTRACTS AND GRANTS
REVISED DECEMBER 15, 2017**

1. Definitions: For purposes of this Attachment, “Party” shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. “Agreement” shall mean the specific contract or grant to which this form is attached.

2. Entire Agreement: This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial: This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

4. Sovereign Immunity: The State reserves all immunities, defenses, rights or actions arising out of the State’s sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State’s immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State’s entry into this Agreement.

5. No Employee Benefits For Party: The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

6. Independence: The Party will act in an independent capacity and not as officers or employees of the State.

7. Defense and Indemnity: The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.

8. Insurance: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

General Liability and Property Damage: With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

- Premises - Operations

- Products and Completed Operations

- Personal Injury Liability

- Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

- \$1,000,000 Each Occurrence

- \$2,000,000 General Aggregate

- \$1,000,000 Products/Completed Operations Aggregate

- \$1,000,000 Personal & Advertising Injury

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

Additional Insured. The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees

as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Notice of Cancellation or Change. There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

9. Reliance by the State on Representations: All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with this Agreement, including but not limited to bills, invoices, progress reports and other proofs of work.

10. False Claims Act: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

11. Whistleblower Protections: The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

12. Location of State Data: No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of the State.

13. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine-readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

14. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

15. Set Off: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

16. Taxes Due to the State:

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

17. Taxation of Purchases: All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

18. Child Support: (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

19. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10

("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 30 ("State Facilities"); and Section 32.A ("Certification Regarding Use of State Funds").

20. No Gifts or Gratuities: Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

21. Copies: Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

22. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

23. Conflict of Interest: Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

24. Confidentiality: Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

25. Force Majeure: Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

26. Marketing: Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

27. Termination:

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and

in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.

B. Termination for Cause: Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.

C. Termination Assistance: Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

28. Continuity of Performance: In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

29. No Implied Waiver of Remedies: Either party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

30. State Facilities: If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements: If this Agreement is a grant that is funded in whole or in part by Federal funds:

A. Requirement to Have a Single Audit: The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

B. Internal Controls: In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

- C. Mandatory Disclosures:** In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

32. Requirements Pertaining Only to State-Funded Grants:

- A. Certification Regarding Use of State Funds:** If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.
- B. Good Standing Certification (Act 154 of 2016):** If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)

ATTACHMENT D
INFORMATION TECHNOLOGY SYSTEM IMPLEMENTATION
TERMS AND CONDITIONS (rev. 3/08/19)

1. MODIFICATIONS TO CONTRACTOR DOCUMENTS

The parties specifically agree that the Contractor Documents are hereby modified and superseded by Attachment C and this Attachment D.

“Contractor Documents” shall mean one or more document, agreement or other instrument required by Contractor in connection with the performance of the products and services being purchased by the State, regardless of format, including the license agreement, end user license agreement or similar document, any hyperlinks to documents contained in the Contractor Documents, agreement or other instrument and any other paper or “shrinkwrap,” “clickwrap,” “browsewrap” or other electronic version thereof.

2. NO SUBSEQUENT, UNILATERAL MODIFICATION OF TERMS BY CONTRACTOR

Notwithstanding any other provision or other unilateral license terms which may be issued by Contractor during the Term of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an order for the products and services being purchased by the State, as applicable, the components of which are licensed under the Contractor Documents, or the fact that such other agreement may be affixed to or accompany the products and services being purchased by the State, as applicable, upon delivery, the terms and conditions set forth herein shall supersede and govern licensing and delivery of all products and services hereunder.

3. TERM OF CONTRACTOR’S DOCUMENTS; PAYMENT TERMS

Contractor acknowledges and agrees that, to the extent a Contractor Document provides for alternate term or termination provisions, including automatic renewals, such sections shall be waived and shall have no force and effect. All Contractor Documents shall run concurrently with the term of this Contract; provided, however, to the extent the State has purchased a perpetual license to use the Contractor’s software, hardware or other services, such license shall remain in place unless expressly terminated in accordance with the terms of this Contract. Contractor acknowledges and agrees that, to the extent a Contractor Document provides for payment terms which differ from the payment terms set forth in Attachment B, such sections shall be waived and shall have no force and effect and the terms in Attachment B shall govern.

4. OWNERSHIP AND LICENSE IN DELIVERABLES

4.1 Contractor Intellectual Property. Contractor shall retain all right, title and interest in and to any work, ideas, inventions, discoveries, tools, methodology, computer programs, processes and improvements and any other intellectual property, tangible or intangible, that has been created by Contractor prior to entering into this Contract (“Contractor Intellectual Property”). Should the State require a license for the use of Contractor Intellectual Property in connection with the development or use of the items that Contractor is required to deliver to the State under this Contract, including Work Product (“Deliverables”), the Contractor shall grant the State a royalty-free license for such development and use. For the avoidance of doubt, Work Product shall not be deemed to include

Contractor Intellectual Property, provided the State shall be granted an irrevocable, perpetual, non-exclusive royalty-free license to use any such Contractor Intellectual Property that is incorporated into Work Product.

4.2 State Intellectual Property. The State shall retain all right, title and interest in and to (i) all content and all property, data and information furnished by or on behalf of the State or any agency, commission or board thereof, and to all information that is created under this Contract, including, but not limited to, all data that is generated under this Contract as a result of the use by Contractor, the State or any third party of any technology systems or knowledge bases that are developed for the State and used by Contractor hereunder, and all other rights, tangible or intangible; and (ii) all State trademarks, trade names, logos and other State identifiers, Internet uniform resource locators, State user name or names, Internet addresses and e-mail addresses obtained or developed pursuant to this Contract (collectively, “State Intellectual Property”).

Contractor may not use State Intellectual Property for any purpose other than as specified in this Contract. Upon expiration or termination of this Contract, Contractor shall return or destroy all State Intellectual Property and all copies thereof, and Contractor shall have no further right or license to such State Intellectual Property.

Contractor acquires no rights or licenses, including, without limitation, intellectual property rights or licenses, to use State Intellectual Property for its own purposes. In no event shall the Contractor claim any security interest in State Intellectual Property.

4.3 Work Product. All Work Product shall belong exclusively to the State, with the State having the sole and exclusive right to apply for, obtain, register, hold and renew, in its own name and/or for its own benefit, all patents and copyrights, and all applications and registrations, renewals and continuations thereof and/or any and all other appropriate protection. To the extent exclusive title and/or complete and exclusive ownership rights in and to any Work Product may not originally vest in the State by operation of law or otherwise as contemplated hereunder, Contractor shall immediately upon request, unconditionally and irrevocably assign, transfer and convey to the State all right, title and interest therein.

“Work Product” means any tangible or intangible ideas, inventions, improvements, modifications, discoveries, development, customization, configuration, methodologies or processes, designs, models, drawings, photographs, reports, formulas, algorithms, patterns, devices, compilations, databases, computer programs, work of authorship, specifications, operating instructions, procedures manuals or other documentation, technique, know-how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection), that is specifically made, conceived, discovered or reduced to practice by Contractor, either solely or jointly with others, pursuant to this Contract. Work Product does not include Contractor Intellectual Property or third party intellectual property.

To the extent delivered under this Contract, upon full payment to Contractor in accordance with Attachment B, and subject to the terms and conditions contained herein, Contractor hereby (i) assigns to State all rights in and to all Deliverables, except to the extent they include any Contractor Intellectual Property; and (ii) grants to State a perpetual, non-exclusive, irrevocable, royalty-free license to use for State’s internal business purposes, any Contractor Intellectual Property included in the Deliverables in connection with its use of the Deliverables and, subject to the State’s obligations with respect to Confidential Information, authorize others to do the same on the State’s behalf. Except for the

foregoing license grant, Contractor or its licensors retain all rights in and to all Contractor Intellectual Property.

The Contractor shall not sell or copyright a Deliverable without explicit permission from the State.

If the Contractor is operating a system or application on behalf of the State of Vermont, then the Contractor shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Contractor Intellectual Property or Contractor Intellectual Property developed outside of this Contract with no assistance from State.

4.1 Contractor Intellectual Property.

As between the parties, and subject to the terms and conditions of this Contract, Contractor and its third-party suppliers will retain ownership of all intellectual property rights in the [System], and any and all derivative works made to the [System] or any part thereof, as well as all Work Product provided to the State (“**Contractor Proprietary Technology**”). The State acquires no rights to Contractor Proprietary Technology except for the licensed interests granted under this Contract. The term “**Work Product**” means all other materials, reports, manuals, visual aids, documentation, ideas, concepts, techniques, inventions, processes, or works of authorship developed, provided or created by Contractor or its employees or contractors during the course of performing work for the State (excluding any State Data or derivative works thereof and excluding any output from the [System] generated by the State’s use of the [System], including without limitation, reports, graphs, charts and modified State Data, but expressly including any form templates of such reports, graphs or charts by themselves that do not include the State Data).

Title, ownership rights, and all Intellectual Property Rights in and to the [System] will remain the sole property of Contractor or its suppliers. The State acknowledges that the source code is not covered by any license hereunder and will not be provided by Contractor. Except as set forth in this Contract, no right or implied license or right of any kind is granted to the State regarding the [System] or any part thereof. Nothing in this Contract confers upon either party any right to use the other party's trade names and trademarks, except for permitted license use in accordance with this Contract. All use of such marks by either party will inure to the benefit of the owner of such marks, use of which will be subject to specifications controlled by the owner.

4.2 State Intellectual Property; User Name

The State shall retain all right, title and interest in and to (i) all content and all property, data and information furnished by or on behalf of the State or any agency, commission or board thereof, and to all information that is created under this Contract, including, but not limited to, all data that is generated under this Contract as a result of the use by Contractor, the State or any third party of any technology systems or knowledge bases that are developed for the State and used by Contractor hereunder, and all other rights, tangible or intangible; and (ii) all State trademarks, trade names, logos and other State identifiers, Internet uniform resource locators, State user name or names, Internet addresses and e-mail addresses obtained or developed pursuant to this Contract (collectively, “**State Intellectual Property**”).

Contractor may not collect, access or use State Intellectual Property for any purpose other than as specified in this Contract. Upon expiration or termination of this Contract, Contractor shall return or destroy all State Intellectual Property and all copies thereof, and Contractor shall have no further right or license to such State Intellectual Property.

Contractor acquires no rights or licenses, including, without limitation, intellectual property rights or licenses, to use State Intellectual Property for its own purposes. In no event shall the Contractor claim any security interest in State Intellectual Property.

5. CONFIDENTIALITY AND NON-DISCLOSURE; SECURITY BREACH REPORTING

5.1 For purposes of this Contract, confidential information will not include information or material which (a) enters the public domain (other than as a result of a breach of this Contract); (b) was in the receiving party's possession prior to its receipt from the disclosing party; (c) is independently developed by the receiving party without the use of confidential information; (d) is obtained by the receiving party from a third party under no obligation of confidentiality to the disclosing party; or (e) is not exempt from disclosure under applicable State law.

5.2 **Confidentiality of Contractor Information.** The Contractor acknowledges and agrees that this Contract and any and all Contractor information obtained by the State in connection with this Contract are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. The State will not disclose information for which a reasonable claim of exemption can be made pursuant to 1 V.S.A. § 317(c), including, but not limited to, trade secrets, proprietary information or financial information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to the Contractor, and which gives the Contractor an opportunity to obtain business advantage over competitors who do not know it or use it.

The State shall immediately notify Contractor of any request made under the Access to Public Records Act, or any request or demand by any court, governmental agency or other person asserting a demand or request for Contractor information. Contractor may, in its discretion, seek an appropriate protective order, or otherwise defend any right it may have to maintain the confidentiality of such information under applicable State law within three business days of the State's receipt of any such request. Contractor agrees that it will not make any claim against the State if the State makes available to the public any information in accordance with the Access to Public Records Act or in response to a binding order from a court or governmental body or agency compelling its production. Contractor shall indemnify the State for any costs or expenses incurred by the State, including, but not limited to, attorneys' fees awarded in accordance with 1 V.S.A. § 320, in connection with any action brought in connection with Contractor's attempts to prevent or unreasonably delay public disclosure of Contractor's information if a final decision of a court of competent jurisdiction determines that the State improperly withheld such information and that the improper withholding was based on Contractor's attempts to prevent public disclosure of Contractor's information.

The State agrees that (a) it will use the Contractor information only as may be necessary in the course of performing duties, receiving services or exercising rights under this Contract; (b) it will provide at a minimum the same care to avoid disclosure or unauthorized use of Contractor information as it provides to protect its own similar confidential and proprietary information; (c) except as required by the Access to Records Act, it will not disclose such information orally or in writing to any third party unless that third party is subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Contract; (d) it will take all reasonable precautions to protect the Contractor's information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity.

Contractor may affix an appropriate legend to Contractor information that is provided under this Contract to reflect the Contractor's determination that any such information is a trade secret, proprietary information or financial information at time of delivery or disclosure.

5.3 Confidentiality of State Information. In performance of this Contract, and any exhibit or schedule hereunder, the Contractor acknowledges that certain State Data (as defined below), to which the Contractor may have access may contain individual federal tax information, personal protected health information and other individually identifiable information protected by State or federal law or otherwise exempt from disclosure under the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. ("State Data"). In addition to the provisions of this Section, the Contractor shall comply with the requirements set forth in the State's HIPAA Business Associate Agreement attached to this Contract as Attachment E.

State Data shall not be stored, accessed from, or transferred to any location outside the United States.

Unless otherwise instructed by the State, Contractor agrees to keep confidential all State Data. The Contractor agrees that (a) it will use the State Data only as may be necessary in the course of performing duties or exercising rights under this Contract; (b) it will provide at a minimum the same care to avoid disclosure or unauthorized use of State Data as it provides to protect its own similar confidential and proprietary information; (c) it will not publish, reproduce, or otherwise divulge any State Data in whole or in part, in any manner or form orally or in writing to any third party unless it has received written approval from the State and that third party is subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Contract; (d) it will take all reasonable precautions to protect the State's information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity. Contractor will take reasonable measures as are necessary to restrict access to State Data in the Contractor's possession to only those employees on its staff who must have the information on a "need to know" basis. The Contractor shall not retain any State Data except to the extent required to perform the services under this Contract.

Contractor shall not access State user accounts or State Data, except in the course of data center operations, response to service or technical issues, as required by the express terms of this Contract, or at State's written request.

Contractor may not share State Data with its parent company or other affiliate without State's express written consent.

The Contractor shall promptly notify the State of any request or demand by any court, governmental agency or other person asserting a demand or request for State Data to which the Contractor or any third party hosting service of the Contractor may have access, so that the State may seek an appropriate protective order.

6. SECURITY OF STATE INFORMATION

6.1 Security Standards. To the extent the Contractor or its subcontractors, affiliates or agents handles, collects, stores, disseminates or otherwise deals with State Data, the Contractor represents and warrants that it has implemented and it shall maintain during the term of this Contract the highest industry standard administrative, technical, and physical safeguards and controls consistent with NIST *Special Publication 800-53* (version 4 or higher) and *Federal Information Processing Standards Publication 200* and designed to (i) ensure the security and confidentiality of State Data; (ii) protect

against any anticipated security threats or hazards to the security or integrity of the State Data; and (iii) protect against unauthorized access to or use of State Data. Such measures shall include at a minimum: (1) access controls on information systems, including controls to authenticate and permit access to State Data only to authorized individuals and controls to prevent the Contractor employees from providing State Data to unauthorized individuals who may seek to obtain this information (whether through fraudulent means or otherwise); (2) industry-standard firewall protection; (3) encryption of electronic State Data while in transit from the Contractor networks to external networks; (4) measures to store in a secure fashion all State Data which shall include, but not be limited to, encryption at rest and multiple levels of authentication; (5) dual control procedures, segregation of duties, and pre-employment criminal background checks for employees with responsibilities for or access to State Data; (6) measures to ensure that the State Data shall not be altered or corrupted without the prior written consent of the State; (7) measures to protect against destruction, loss or damage of State Data due to potential environmental hazards, such as fire and water damage; (8) staff training to implement the information security measures; and (9) monitoring of the security of any portions of the Contractor systems that are used in the provision of the services against intrusion on a twenty-four (24) hour a day basis.

6.2 Security Breach Notice and Reporting. The Contractor shall have policies and procedures in place for the effective management of Security Breaches, as defined below, which shall be made available to the State upon request.

In addition to the requirements set forth in any applicable Business Associate Agreement as may be attached to this Contract, in the event of any actual security breach or reasonable belief of an actual security breach the Contractor either suffers or learns of that either compromises or could compromise State Data (a “Security Breach”), the Contractor shall notify the State within 24 hours of its discovery. Contractor shall immediately determine the nature and extent of the Security Breach, contain the incident by stopping the unauthorized practice, recover records, shut down the system that was breached, revoke access and/or correct weaknesses in physical security. Contractor shall report to the State: (i) the nature of the Security Breach; (ii) the State Data used or disclosed; (iii) who made the unauthorized use or received the unauthorized disclosure; (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and (v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. The Contractor shall provide such other information, including a written report, as reasonably requested by the State. Contractor shall analyze and document the incident and provide all notices required by applicable law.

In accordance with Section 9 V.S.A. §2435(b)(3), the Contractor shall notify the Office of the Attorney General, or, if applicable, Vermont Department of Financial Regulation (“DFR”), within fourteen (14) business days of the Contractor’s discovery of the Security Breach. The notice shall provide a preliminary description of the breach. The foregoing notice requirement shall be included in the subcontracts of any of Contractor’s subcontractors, affiliates or agents which may be “data collectors” hereunder.

The Contractor agrees to fully cooperate with the State and assume responsibility at its own expense for the following, to be determined in the sole discretion of the State: (i) notice to affected consumers if the State determines it to be appropriate under the circumstances of any particular Security Breach, in a form recommended by the AGO; and (ii) investigation and remediation associated with a Security

Breach, including but not limited to, outside investigation, forensics, counsel, crisis management and credit monitoring, in the sole determination of the State.

The Contractor agrees to comply with all applicable laws, as such laws may be amended from time to time (including, but not limited to, Chapter 62 of Title 9 of the Vermont Statutes and all applicable State and federal laws, rules or regulations) that require notification in the event of unauthorized release of personally-identifiable information or other event requiring notification.

In addition to any other indemnification obligations in this Contract, the Contractor shall fully indemnify and save harmless the State from any costs, loss or damage to the State resulting from a Security Breach or the unauthorized disclosure of State Data by the Contractor, its officers, agents, employees, and subcontractors.

6.3 Security Policies. To the extent the Contractor or its subcontractors, affiliates or agents handles, collects, stores, disseminates or otherwise deals with State Data, the Contractor will have an information security policy that protects its systems and processes and media that may contain State Data from internal and external security threats and State Data from unauthorized disclosure, and will have provided a copy of such policy to the State. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.

7. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

7.1 General Representations and Warranties. The Contractor represents, warrants and covenants that:

- (i) The Contractor has all requisite power and authority to execute, deliver and perform its obligations under this Contract and the execution, delivery and performance of this Contract by the Contractor has been duly authorized by the Contractor.
- (ii) There is no outstanding litigation, arbitrated matter or other dispute to which the Contractor is a party which, if decided unfavorably to the Contractor, would reasonably be expected to have a material adverse effect on the Contractor's ability to fulfill its obligations under this Contract.
- (iii) The Contractor will comply with all laws applicable to its performance of the services and otherwise to the Contractor in connection with its obligations under this Contract.
- (iv) The Contractor (a) owns, or has the right to use under valid and enforceable agreements, all intellectual property rights reasonably necessary for and related to delivery of the services and provision of the Deliverables as set forth in this Contract; (b) shall be responsible for and have full authority to license all proprietary and/or third party software modules, including algorithms and protocols, that Contractor incorporates into its product; and (c) none of the Deliverables or other materials or technology provided by the Contractor to the State will infringe upon or misappropriate the intellectual property rights of any third party.
- (v) The Contractor has adequate resources to fulfill its obligations under this Contract.
- (vi) Neither Contractor nor Contractor's subcontractors has past state or federal violations, convictions or suspensions relating to miscoding of employees in NCCI job codes for purposes of differentiating between independent contractors and employees.

7.2 Contractor's Performance Warranties. Contractor represents and warrants to the State that:

- (i) All Deliverables will be free from material errors and shall perform in accordance with the specifications therefor for a period of at least one year.
- (ii) Contractor will provide to the State commercially reasonable continuous and uninterrupted access to the Service, and will not interfere with the State's access to and use of the Service during the term of this Contract;
- (iii) The Service is compatible with and will operate successfully with any environment (including web browser and operating system) specified by the Contractor in its documentation;
- (iv) Each and all of the services shall be performed in a timely, diligent, professional and skillful manner, in accordance with the highest professional or technical standards applicable to such services, by qualified persons with the technical skills, training and experience to perform such services in the planned environment.
- (v) All Deliverables supplied by the Contractor to the State shall be transferred free and clear of any and all restrictions on the conditions of transfer, modification, licensing, sublicensing and free and clear of any and all liens, claims, mortgages, security interests, liabilities and encumbrances or any kind.
- (vi) Any time software is delivered to the State, whether delivered via electronic media or the internet, no portion of such software or the media upon which it is stored or delivered will have any type of software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the operation of any hardware, software, data or peripheral equipment of or utilized by the State. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any software delivered hereunder, Contractor will, upon State's request, provide a new or clean install of the software. Notwithstanding the foregoing, Contractor assumes no responsibility for the State's negligence or failure to protect data from viruses, or any unintended modification, destruction or disclosure.
- (vii) To the extent Contractor resells commercial hardware or software it purchased from a third party, Contractor will, to the extent it is legally able to do so, pass through any such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor's warranty obligations set forth herein.

7.3 Limitation on Disclaimer. The express warranties set forth in this Contract shall be in lieu of all other warranties, express or implied.

7.4 Effect of Breach of Warranty. If, at any time during the term of this Contract, software or the results of Contractor's work fail to perform according to any warranty of Contractor under this Contract, the State shall promptly notify Contractor in writing of such alleged nonconformance, and Contractor shall, at its own expense and without limiting any other rights or remedies of the State hereunder, re-perform or replace any services that the State has determined to be unsatisfactory in its reasonable discretion. Alternatively, with State consent, the Contractor may refund of all amounts paid by State for the nonconforming deliverable or service

8. PROFESSIONAL LIABILITY AND CYBER LIABILITY INSURANCE COVERAGE

In addition to the insurance required in Attachment C to this Contract, before commencing work on this Contract and throughout the term of this Contract, Contractor agrees to procure and maintain (a) Technology Professional Liability insurance for any and all services performed under this Contract, with minimum third party coverage of \$3,000,000.00 per claim, \$5,000,000.00 aggregate; and (b) first party Breach Notification Coverage of not less than \$3,000,000.00.

Before commencing work on this Contract the Contractor must provide certificates of insurance to show that the foregoing minimum coverages are in effect.

With respect to the first party Breach Notification Coverage, Contractor shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Contract.

9. LIMITATION OF LIABILITY.

CONTRACTOR'S LIABILITY FOR DAMAGES TO THE STATE ARISING OUT OF THE SUBJECT MATTER OF THIS CONTRACT SHALL NOT EXCEED THREE TIMES THE MAXIMUM AMOUNT PAYABLE UNDER THIS CONTRACT. LIMITS OF LIABILITY FOR STATE CLAIMS SHALL NOT APPLY TO STATE CLAIMS ARISING OUT OF: (A) CONTRACTOR'S OBLIGATION TO INDEMNIFY THE STATE; (B) CONTRACTOR'S CONFIDENTIALITY OBLIGATIONS TO THE STATE; (C) PERSONAL INJURY OR DAMAGE TO REAL OR PERSONAL PROPERTY; (D) CONTRACTOR'S GROSS NEGLIGENCE, FRAUD OR INTENTIONAL MISCONDUCT; OR (E) VIOLATIONS OF THE STATE OF VERMONT FRAUDULENT CLAIMS ACT. IN NO EVENT SHALL THIS LIMIT OF LIABILITY BE CONSTRUED TO LIMIT CONTRACTOR'S LIABILITY FOR THIRD PARTY CLAIMS AGAINST THE CONTRACTOR WHICH MAY ARISE OUT OF CONTRACTOR'S ACTS OR OMISSIONS IN THE PERFORMANCE OF THIS CONTRACT.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL OR SPECIAL DAMAGES, DAMAGES WHICH ARE UNFORESEEABLE TO THE PARTIES AT THE TIME OF CONTRACTING, DAMAGES WHICH ARE NOT PROXIMATELY CAUSED BY A PARTY, SUCH AS LOSS OF ANTICIPATED BUSINESS, OR LOST PROFITS, INCOME, GOODWILL, OR REVENUE IN CONNECTION WITH OR ARISING OUT OF THE SUBJECT MATTER OF THIS CONTRACT.

The provisions of this Section shall apply notwithstanding any other provisions of this Contract or any other agreement.

10. TRADE SECRET, PATENT AND COPYRIGHT INFRINGEMENT

The State shall not be deemed to waive any of its rights or remedies at law or in equity in the event of Contractor's trade secret, patent and/or copyright infringement.

12 REMEDIES FOR DEFAULT; NO WAIVER OF REMEDIES

In the event either party is in default under this Contract, the non-defaulting party may, at its option, pursue any or all of the remedies available to it under this Contract, including termination for cause, and at law or in equity.

No delay or failure to exercise any right, power or remedy accruing to either party upon breach or default by the other under this Contract shall impair any such right, power or remedy, or shall be construed as a

waiver of any such right, power or remedy, nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. All waivers must be in writing.

13 NO ASSUMPTION OF COSTS

Any requirement that the State defend or indemnify Contractor or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or license verification costs of Contractor, is hereby deleted from the Contractor Documents.

14 TERMINATION

Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to the State all State information, State Intellectual Property or State Data (including without limitation any Deliverables for which State has made payment in whole or in part) ("State Materials"), that are in the possession or under the control of Contractor in whatever stage of development and form of recordation such State property is expressed or embodied at that time.

In the event the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the Contractor shall immediately return all State Materials to State control; including, but not limited to, making all necessary access to applicable remote systems available to the State for purposes of downloading all State Materials.

Contractor shall reasonably cooperate with other parties in connection with all services to be delivered under this Contract, including without limitation any successor provider to whom State Materials are to be transferred in connection with termination. Contractor shall assist the State in exporting and extracting the State Materials, in a format usable without the use of the Services and as agreed to by State, at no additional cost.

Any transition services requested by State involving additional knowledge transfer and support may be subject to a contract amendment for a fixed fee or at rates to be mutually agreed upon by the parties.

If the State determines in its sole discretion that a documented transition plan is necessary, then no later than sixty (60) days prior to termination, Contractor and the State shall mutually prepare a Transition Plan identifying transition services to be provided.

15. ACCESS TO STATE DATA:

The State may import or export State Materials in part or in whole at its sole discretion at any time (24 hours a day, seven (7) days a week, 365 days a year), during the term of this Contract or for up to [three (3) months] after the Term (so long as the State Materials remain in the Contractor's possession) without interference from the Contractor in a format usable without the Service and in an agreed-upon file format and medium at no additional cost to the State.

The Contractor must allow the State access to information such as system logs and latency statistics that affect its State Materials and or processes.

The Contractor's policies regarding the retrieval of data upon the termination of services have been made available to the State upon execution of this Contract under separate cover. The Contractor shall provide

the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.

16. AUDIT RIGHTS

Contractor will maintain and cause its permitted contractors to maintain a complete audit trail of all transactions and activities, financial and non-financial, in connection with this Contract. Contractor will provide to the State, its internal or external auditors, clients, inspectors, regulators and other designated representatives, at reasonable times (and in the case of State or federal regulators, at any time required by such regulators) access to Contractor personnel and to any and all Contractor facilities or where the required information, data and records are maintained, for the purpose of performing audits and inspections (including unannounced and random audits) of Contractor and/or Contractor personnel and/or any or all of the records, data and information applicable to this Contract.

At a minimum, such audits, inspections and access shall be conducted to the extent permitted or required by any laws applicable to the State or Contractor (or such higher or more rigorous standards, if any, as State or Contractor applies to its own similar businesses, operations or activities), to (i) verify the accuracy of charges and invoices; (ii) verify the integrity of State Data and examine the systems that process, store, maintain, support and transmit that data; (iii) examine and verify Contractor's and/or its permitted contractors' operations and security procedures and controls; (iv) examine and verify Contractor's and/or its permitted contractors' disaster recovery planning and testing, business resumption and continuity planning and testing, contingency arrangements and insurance coverage; and (v) examine Contractor's and/or its permitted contractors' performance of the Services including audits of: (1) practices and procedures; (2) systems, communications and information technology; (3) general controls and physical and data/information security practices and procedures; (4) quality initiatives and quality assurance, (5) contingency and continuity planning, disaster recovery and back-up procedures for processes, resources and data; (6) Contractor's and/or its permitted contractors' efficiency and costs in performing Services; (7) compliance with the terms of this Contract and applicable laws, and (9) any other matters reasonably requested by the State. Contractor shall provide and cause its permitted contractors to provide full cooperation to such auditors, inspectors, regulators and representatives in connection with audit functions and with regard to examinations by regulatory authorities, including the installation and operation of audit software.

17. DESTRUCTION OF STATE DATA

At any time during the term of this Contract within (i) thirty (30) days of the State's written request or (ii) [three (3) months] of termination or expiration of this Contract for any reason, and in any event after the State has had an opportunity to export and recover the State Materials, Contractor shall at its own expense securely destroy and erase from all systems it directly or indirectly uses or controls all tangible or intangible forms of the State Materials, in whole or in part, and all copies thereof except such records as are required by law. The destruction of State Data and State Intellectual Property shall be performed according to National Institute of Standards and Technology (NIST) approved methods. Contractor shall certify in writing to the State that such State Data has been disposed of securely. To the extent that any applicable law prevents Contractor from destroying or erasing State Materials as set forth herein, Contractor shall retain, in its then current state, all such State Materials then within its right of control or possession in accordance with the confidentiality, security and other requirements of this Contract, and perform its obligations under this section as soon as such law no longer prevents it from doing so.

Further, upon the relocation of State Data, Contractor shall securely dispose of such copies from the former data location and certify in writing to the State that such State Data has been disposed of securely. Contractor shall comply with all reasonable directions provided by the State with respect to the disposal of State Data.

18 CONTRACTOR BANKRUPTCY.

Contractor acknowledges that if Contractor, as a debtor in possession, or a trustee in bankruptcy in a case under Section 365(n) of Title 11, United States Code (the "Bankruptcy Code"), rejects this Contract, the State may elect to retain its rights under this Contract as provided in Section 365(n) of the Bankruptcy Code. Upon written request of the State to Contractor or the Bankruptcy Trustee, Contractor or such Bankruptcy Trustee shall not interfere with the rights of the State as provided in this Contract, including the right to obtain the State Intellectual Property.

19 SOFTWARE LICENSEE COMPLIANCE REPORT.

In lieu of any requirement that may be in a Contractor Document that the State provide the Contractor with access to its System for the purpose of determining State compliance with the terms of the Contractor Document, upon request and not more frequently than annually, the State will provide Contractor with a certified report concerning the State's use of any software licensed for State use pursuant this Contract. The parties agree that any non-compliance indicated by the report shall not constitute infringement of the licensor's intellectual property rights, and that settlement payment mutually agreeable to the parties shall be the exclusive remedy for any such non-compliance.

20 IRS TERMS IF FEDERAL TAX INFO WILL BE PROCESSED OR STORED (Per IRS Publication 1075)

To the extent Contractor's performance under this Contract involves the processing or storage of Federal tax information, then, pursuant to IRS Publication 1075, the following provisions shall apply in addition to any other security standard or requirements set forth in this Contract:

A. PERFORMANCE

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by its employees with the following requirements:

1. All work will be done under the supervision of the Contractor or the Contractor's employees.
2. The Contractor and the Contractor's employees with access to or who use Federal tax information must meet the background check requirements defined in IRS Publication 1075.
3. Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.
4. All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.

5. The Contractor certifies that the data processed during the performance of this Contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
6. Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the State or his or her designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the State or its designee with a statement containing the date of destruction, description of material destroyed, and the method used.
7. All computer systems processing, storing, or transmitting Federal tax information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal tax information.
8. No work involving Federal tax information furnished under this Contract will be subcontracted without prior written approval of the IRS.
9. The Contractor will maintain a list of employees authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.
10. The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.

B. CRIMINAL/CIVIL SANCTIONS:

1. Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
2. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the

officer or employee in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431, and set forth at 26 CFR 301.6103(n)-1.

3. Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
4. Prior to Contractor having access to Federal tax information, Contractor shall certify that each Contractor employee or other individual with access to or who use Federal tax information on Contractor's behalf pursuant to this Contract understands the State's security policy and procedures for safeguarding Federal tax information. Contractor's authorization to access Federal tax information hereunder shall be contingent upon annual recertification. The initial certification and recertification must be documented and placed in the State's files for review. As part of the certification, and at least annually afterwards, Contractor will be advised of the provisions of IRCs 7431, 7213, and 7213A (see IRS Publication 1075 *Exhibit 4, Sanctions for Unauthorized Disclosure*, and *Exhibit 5, Civil Damages for Unauthorized Disclosure*). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches (See Publication 1075, Section 10). For both the initial certification and the annual certification, the Contractor must sign a confidentiality statement certifying its understanding of the security requirements.

C. INSPECTION:

The IRS and the State, with 24 hours' notice, shall have the right to send its officers, employees, and inspectors into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work under this Contract for compliance with the requirements defined in IRS Publication 1075. The IRS's right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology assets that access, store, process or transmit Federal tax information. On the basis of such inspection, corrective actions may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

20. SOV Cybersecurity Standard 19-01

All products and service provided to or for the use of the State under this Contract shall be in compliance with State of Vermont Cybersecurity Standard 19-01, which Contractor acknowledges has been provided to it, and is available on-line at the following URL:

<https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives>

21. Unless, and then only to the extent, expressly stated in a written agreement executed by the State that specifically says it takes precedence over this particular provision, no data provided by the State or information derived from or regarding State's use of the provider's goods or services under this Agreement may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction.

ATTACHMENT E BUSINESS ASSOCIATE AGREEMENT

SOV CONTRACTOR BUSINESS ASSOCIATE: ARCHETYPE CONSULTING INC.

SOV CONTRACT NO. 39933 CONTRACT EFFECTIVE DATE: JULY 1, 2020

THIS BUSINESS ASSOCIATE AGREEMENT (“AGREEMENT”) IS ENTERED INTO BY AND BETWEEN THE STATE OF VERMONT AGENCY OF HUMAN SERVICES, OPERATING BY AND THROUGH ITS DEPARTMENT OF VERMONT HEALTH ACCESS (“COVERED ENTITY”) AND PARTY IDENTIFIED IN THIS AGREEMENT AS CONTRACTOR OR GRANTEE ABOVE (“BUSINESS ASSOCIATE”). THIS AGREEMENT SUPPLEMENTS AND IS MADE A PART OF THE CONTRACT OR GRANT (“CONTRACT OR GRANT”) TO WHICH IT IS ATTACHED.

Covered Entity and Business Associate enter into this Agreement to comply with the standards promulgated under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), including the Standards for the Privacy of Individually Identifiable Health Information, at 45 CFR Parts 160 and 164 (“Privacy Rule”), and the Security Standards, at 45 CFR Parts 160 and 164 (“Security Rule”), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), and any associated federal rules and regulations.

The parties agree as follows:

1. Definitions. All capitalized terms used but not otherwise defined in this Agreement have the meanings set forth in 45 CFR Parts 160 and 164 as amended by HITECH and associated federal rules and regulations. Terms defined in this Agreement are italicized. Unless otherwise specified, when used in this Agreement, defined terms used in the singular shall be understood if appropriate in their context to include the plural when applicable.

“*Agent*” means an *Individual* acting within the scope of the agency of the *Business Associate*, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c) and includes Workforce members and *Subcontractors*.

“*Breach*” means the acquisition, Access, Use or Disclosure of *Protected Health Information (PHI)* which compromises the Security or privacy of the *PHI*, except as excluded in the definition of *Breach* in 45 CFR § 164.402.

“*Business Associate*” shall have the meaning given for “Business Associate” in 45 CFR § 160.103 and means Contractor or Grantee and includes its Workforce, *Agents* and *Subcontractors*.

“*Electronic PHI*” shall mean *PHI* created, received, maintained or transmitted electronically in accordance with 45 CFR § 160.103.

“*Individual*” includes a Person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

“*Protected Health Information*” (“*PHI*”) shall have the meaning given in 45 CFR § 160.103, limited to the *PHI* created or received by *Business Associate* from or on behalf of Covered Entity.

“*Required by Law*” means a mandate contained in law that compels an entity to make a use or disclosure of *PHI* and that is enforceable in a court of law and shall have the meaning given in 45 CFR § 164.103.

“*Report*” means submissions required by this Agreement as provided in section 2.3.

“*Security Incident*” means the attempted or successful unauthorized Access, Use, Disclosure, modification, or destruction of Information or interference with system operations in an Information System relating to *PHI* in accordance with 45 CFR § 164.304.

“*Services*” includes all work performed by the *Business Associate* for or on behalf of Covered Entity that requires the Use and/or Disclosure of *PHI* to perform a *Business Associate* function described in 45 CFR § 160.103.

“*Subcontractor*” means a Person to whom *Business Associate* delegates a function, activity, or service, other than in the capacity of a member of the workforce of such *Business Associate*.

“*Successful Security Incident*” shall mean a *Security Incident* that results in the unauthorized Access, Use, Disclosure, modification, or destruction of information or interference with system operations in an Information System.

“*Unsuccessful Security Incident*” shall mean a *Security Incident* such as routine occurrences that do not result in unauthorized Access, Use, Disclosure, modification, or destruction of information or interference with system operations in an Information System, such as: (i) unsuccessful attempts to penetrate computer networks or services maintained by *Business Associate*; and (ii) immaterial incidents such as pings and other broadcast attacks on *Business Associate's* firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above with respect to *Business Associate's* Information System.

“*Targeted Unsuccessful Security Incident*” means an *Unsuccessful Security Incident* that appears to be an attempt to obtain unauthorized Access, Use, Disclosure, modification or destruction of the Covered Entity's *Electronic PHI*.

2. Contact Information for Privacy and Security Officers and Reports.

2.1 *Business Associate* shall provide, within ten (10) days of the execution of this Agreement, written notice to the Contract or Grant manager the names and contact information of both the HIPAA Privacy Officer and HIPAA Security Officer of the *Business Associate*. This information must be updated by *Business Associate* any time these contacts change.

2.2 Covered Entity's HIPAA Privacy Officer and HIPAA Security Officer contact information is posted at: <https://humanservices.vermont.gov/rules-policies/health-insurance-portability-and-accountability-act-hipaa>

2.3 *Business Associate* shall submit all *Reports* required by this Agreement to the following email address: AHS.PrivacyAndSecurity@vermont.gov

3. Permitted and Required Uses/Disclosures of PHI.

3.1 Subject to the terms in this Agreement, *Business Associate* may Use or Disclose *PHI* to perform *Services*, as specified in the Contract or Grant. Such Uses and Disclosures are limited to the minimum necessary to provide the *Services*. *Business Associate* shall not Use or Disclose *PHI* in any manner that would constitute a violation of the Privacy Rule if Used or Disclosed by Covered Entity in that manner. *Business Associate* may not Use or Disclose *PHI* other than as permitted or required by this Agreement or as *Required by Law* and only in compliance with applicable laws and regulations.

3.2 *Business Associate* may make *PHI* available to its Workforce, *Agent* and *Subcontractor* who need Access to perform *Services* as permitted by this Agreement, provided that *Business Associate* makes them aware of the Use and Disclosure restrictions in this Agreement and binds them to comply with such restrictions.

3.3 *Business Associate* shall be directly liable under HIPAA for impermissible Uses and Disclosures of *PHI*.

4. Business Activities. *Business Associate* may Use *PHI* if necessary for *Business Associate's* proper management and administration or to carry out its legal responsibilities. *Business Associate* may Disclose *PHI* for *Business Associate's* proper management and administration or to carry out its legal responsibilities if a Disclosure is *Required by Law* or if *Business Associate* obtains reasonable written assurances via a written agreement from the Person to whom the information is to be Disclosed that such *PHI* shall remain confidential and be Used or further Disclosed only as *Required by Law* or for the purpose for which it was Disclosed to the Person, and the Agreement requires the Person to notify *Business Associate*, within five (5) business days, in writing of any *Breach* of Unsecured *PHI* of which it is aware. Such Uses and Disclosures of *PHI* must be of the minimum amount necessary to accomplish such purposes.

5. Electronic PHI Security Rule Obligations.

5.1 With respect to *Electronic PHI*, *Business Associate* shall:

- a) Implement and use Administrative, Physical, and Technical Safeguards in compliance with 45 CFR sections 164.308, 164.310, and 164.312;
- b) Identify in writing upon request from Covered Entity all the safeguards that it uses to protect such *Electronic PHI*;
- c) Prior to any Use or Disclosure of *Electronic PHI* by an *Agent* or *Subcontractor*, ensure that any *Agent* or *Subcontractor* to whom it provides *Electronic PHI* agrees in writing to implement and use Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of *Electronic PHI*. The written agreement must

identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the Use or Disclosure of *Electronic PHI*, and be provided to Covered Entity upon request;

d) Report in writing to Covered Entity any *Successful Security Incident* or *Targeted Unsuccessful Security Incident* as soon as it becomes aware of such incident and in no event later than five (5) business days after such awareness. Such *Report* shall be timely made notwithstanding the fact that little information may be known at the time of the *Report* and need only include such information then available;

e) Following such *Report*, provide Covered Entity with the information necessary for Covered Entity to investigate any such incident; and

f) Continue to provide to Covered Entity information concerning the incident as it becomes available to it.

5.2 Reporting *Unsuccessful Security Incidents*. *Business Associate* shall provide Covered Entity upon written request a *Report* that: (a) identifies the categories of Unsuccessful Security Incidents; (b) indicates whether *Business Associate* believes its current defensive security measures are adequate to address all *Unsuccessful Security Incidents*, given the scope and nature of such attempts; and (c) if the security measures are not adequate, the measures *Business Associate* will implement to address the security inadequacies.

5.3 *Business Associate* shall comply with any reasonable policies and procedures Covered Entity implements to obtain compliance under the Security Rule.

6. Reporting and Documenting Breaches.

6.1 *Business Associate* shall *Report* to Covered Entity any *Breach* of Unsecured *PHI* as soon as it, or any Person to whom *PHI* is disclosed under this Agreement, becomes aware of any such *Breach*, and in no event later than five (5) business days after such awareness, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. Such *Report* shall be timely made notwithstanding the fact that little information may be known at the time of the *Report* and need only include such information then available.

6.2 Following the *Report* described in 6.1, *Business Associate* shall conduct a risk assessment and provide it to Covered Entity with a summary of the event. *Business Associate* shall provide Covered Entity with the names of any *Individual* whose Unsecured *PHI* has been, or is reasonably believed to have been, the subject of the *Breach* and any other available information that is required to be given to the affected *Individual*, as set forth in 45 CFR § 164.404(c). Upon request by Covered Entity, *Business Associate* shall provide information necessary for Covered Entity to investigate the impermissible Use or Disclosure. *Business Associate* shall continue to provide to Covered Entity information concerning the *Breach* as it becomes available.

6.3 When *Business Associate* determines that an impermissible acquisition, Access, Use or Disclosure of *PHI* for which it is responsible is not a *Breach*, and therefore does not necessitate notice to the impacted *Individual*, it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). *Business Associate* shall make its risk assessment available to Covered Entity upon request. It shall include 1) the name of the person making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low probability that the *PHI* had been compromised.

7. **Mitigation and Corrective Action.** *Business Associate* shall mitigate, to the extent practicable, any harmful effect that is known to it of an impermissible Use or Disclosure of *PHI*, even if the impermissible Use or Disclosure does not constitute a *Breach*. *Business Associate* shall draft and carry out a plan of corrective action to address any incident of impermissible Use or Disclosure of *PHI*. *Business Associate* shall make its mitigation and corrective action plans available to Covered Entity upon request.

8. **Providing Notice of Breaches.**

8.1 If Covered Entity determines that a *Breach* of *PHI* for which *Business Associate* was responsible, and if requested by Covered Entity, *Business Associate* shall provide notice to the *Individual* whose *PHI* has been the subject of the *Breach*. When so requested, *Business Associate* shall consult with Covered Entity about the timeliness, content and method of notice, and shall receive Covered Entity's approval concerning these elements. *Business Associate* shall be responsible for the cost of notice and related remedies.

8.2 The notice to affected *Individuals* shall be provided as soon as reasonably possible and in no case later than sixty (60) calendar days after *Business Associate* reported the *Breach* to Covered Entity.

8.3 The notice to affected *Individuals* shall be written in plain language and shall include, to the extent possible: 1) a brief description of what happened; 2) a description of the types of Unsecured *PHI* that were involved in the *Breach*; 3) any steps *Individuals* can take to protect themselves from potential harm resulting from the *Breach*; 4) a brief description of what the *Business Associate* is doing to investigate the *Breach* to mitigate harm to *Individuals* and to protect against further *Breaches*; and 5) contact procedures for *Individuals* to ask questions or obtain additional information, as set forth in 45 CFR § 164.404(c).

8.4 *Business Associate* shall notify *Individuals* of *Breaches* as specified in 45 CFR § 164.404(d) (methods of *Individual* notice). In addition, when a *Breach* involves more than 500 residents of Vermont, *Business Associate* shall, if requested by Covered Entity, notify prominent media outlets serving Vermont, following the requirements set forth in 45 CFR § 164.406.

9. **Agreements with Subcontractors.** *Business Associate* shall enter into a Business Associate Agreement with any *Subcontractor* to whom it provides *PHI* to require compliance with HIPAA and to ensure *Business Associate* and *Subcontractor* comply with the terms and conditions of this Agreement. *Business Associate* must enter into such written agreement before any Use by or Disclosure of *PHI* to such *Subcontractor*. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the Use or Disclosure of

PHI. Business Associate shall provide a copy of the written agreement it enters into with a Subcontractor to Covered Entity upon request. Business Associate may not make any Disclosure of PHI to any Subcontractor without prior written consent of Covered Entity.

10. Access to PHI. *Business Associate shall provide access to PHI in a Designated Record Set to Covered Entity or as directed by Covered Entity to an Individual to meet the requirements under 45 CFR § 164.524. Business Associate shall provide such access in the time and manner reasonably designated by Covered Entity. Within five (5) business days, Business Associate shall forward to Covered Entity for handling any request for Access to PHI that Business Associate directly receives from an Individual.*

11. Amendment of PHI. *Business Associate shall make any amendments to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526, whether at the request of Covered Entity or an Individual. Business Associate shall make such amendments in the time and manner reasonably designated by Covered Entity. Within five (5) business days, Business Associate shall forward to Covered Entity for handling any request for amendment to PHI that Business Associate directly receives from an Individual.*

12. Accounting of Disclosures. *Business Associate shall document Disclosures of PHI and all information related to such Disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Business Associate shall provide such information to Covered Entity or as directed by Covered Entity to an Individual, to permit Covered Entity to respond to an accounting request. Business Associate shall provide such information in the time and manner reasonably designated by Covered Entity. Within five (5) business days, Business Associate shall forward to Covered Entity for handling any accounting request that Business Associate directly receives from an Individual.*

13. Books and Records. *Subject to the attorney-client and other applicable legal privileges, Business Associate shall make its internal practices, books, and records (including policies and procedures and PHI) relating to the Use and Disclosure of PHI available to the Secretary of Health and Human Services (HHS) in the time and manner designated by the Secretary. Business Associate shall make the same information available to Covered Entity, upon Covered Entity's request, in the time and manner reasonably designated by Covered Entity so that Covered Entity may determine whether Business Associate is in compliance with this Agreement.*

14. Termination.

14.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or until all the PHI is destroyed or returned to Covered Entity subject to Section 18.8.

14.2 If Business Associate fails to comply with any material term of this Agreement, Covered Entity may provide an opportunity for Business Associate to cure. If Business Associate does not cure within the time specified by Covered Entity or if Covered Entity believes that cure is not reasonably possible, Covered Entity may immediately terminate the Contract or Grant without incurring liability or penalty for such termination. If neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary of HHS. Covered Entity has the right to

seek to cure such failure by *Business Associate*. Regardless of whether Covered Entity cures, it retains any right or remedy available at law, in equity, or under the Contract or Grant and *Business Associate* retains its responsibility for such failure.

15. Return/Destruction of PHI.

15.1 *Business Associate* in connection with the expiration or termination of the Contract or Grant shall return or destroy, at the discretion of the Covered Entity, *PHI* that *Business Associate* still maintains in any form or medium (including electronic) within thirty (30) days after such expiration or termination. *Business Associate* shall not retain any copies of *PHI*. *Business Associate* shall certify in writing and report to Covered Entity (1) when all *PHI* has been returned or destroyed and (2) that *Business Associate* does not continue to maintain any *PHI*. *Business Associate* is to provide this certification during this thirty (30) day period.

15.2 *Business Associate* shall report to Covered Entity any conditions that *Business Associate* believes make the return or destruction of *PHI* infeasible. *Business Associate* shall extend the protections of this Agreement to such *PHI* and limit further Uses and Disclosures to those purposes that make the return or destruction infeasible for so long as *Business Associate* maintains such *PHI*.

16. Penalties. *Business Associate* understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of *PHI* and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations.

17. Training. *Business Associate* understands its obligation to comply with the law and shall provide appropriate training and education to ensure compliance with this Agreement. If requested by Covered Entity, *Business Associate* shall participate in Covered Entity's training regarding the Use, Confidentiality, and Security of *PHI*; however, participation in such training shall not supplant nor relieve *Business Associate* of its obligations under this Agreement to independently assure compliance with the law and this Agreement.

18. Miscellaneous.

18.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Contract or Grant, the terms of this Agreement shall govern with respect to its subject matter. Otherwise, the terms of the Contract or Grant continue in effect.

18.2 Each party shall cooperate with the other party to amend this Agreement from time to time as is necessary for such party to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA. This Agreement may not be amended, except by a writing signed by all parties hereto.

18.3 Any ambiguity in this Agreement shall be resolved to permit the parties to comply with the Privacy Rule, Security Rule, or any other standards promulgated under HIPAA.

18.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule, Security Rule, and HITECH) in construing the meaning and effect of this Agreement.

18.5 *Business Associate* shall not have or claim any ownership of *PHI*.

18.6 *Business Associate* shall abide by the terms and conditions of this Agreement with respect to all *PHI* even if some of that information relates to specific services for which *Business Associate* may not be a “*Business Associate*” of Covered Entity under the Privacy Rule.

18.7 *Business Associate* is prohibited from directly or indirectly receiving any remuneration in exchange for an *Individual’s PHI*. *Business Associate* will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. *Reports* or data containing *PHI* may not be sold without Covered Entity’s or the affected Individual’s written consent.

18.8 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for *Business Associate* to return or destroy *PHI* as provided in Section 14.2 and (b) the obligation of *Business Associate* to provide an accounting of disclosures as set forth in Section 12 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

ATTACHMENT F
AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT/GRANT PROVISIONS

1. **Definitions:** For purposes of this Attachment F, the term “Agreement” shall mean the form of the contract or grant, with all of its parts, into which this Attachment F is incorporated. The meaning of the term “Party” when used in this Attachment F shall mean any named party to this Agreement *other than* the State of Vermont, the Agency of Human Services (AHS) and any of the departments, boards, offices and business units named in this Agreement. As such, the term “Party” shall mean, when used in this Attachment F, the Contractor or Grantee with whom the State of Vermont is executing this Agreement. If Party, when permitted to do so under this Agreement, seeks by way of any subcontract, sub-grant or other form of provider agreement to employ any other person or entity to perform any of the obligations of Party under this Agreement, Party shall be obligated to ensure that all terms of this Attachment F are followed. As such, the term “Party” as used herein shall also be construed as applicable to, and describing the obligations of, any subcontractor, sub-recipient or sub-grantee of this Agreement. Any such use or construction of the term “Party” shall not, however, give any subcontractor, sub-recipient or sub-grantee any substantive right in this Agreement without an express written agreement to that effect by the State of Vermont.
2. **Agency of Human Services:** The Agency of Human Services is responsible for overseeing all contracts and grants entered by any of its departments, boards, offices and business units, however denominated. The Agency of Human Services, through the business office of the Office of the Secretary, and through its Field Services Directors, will share with any named AHS-associated party to this Agreement oversight, monitoring and enforcement responsibilities. Party agrees to cooperate with both the named AHS-associated party to this contract and with the Agency of Human Services itself with respect to the resolution of any issues relating to the performance and interpretation of this Agreement, payment matters and legal compliance.
3. **Medicaid Program Parties** (*applicable to any Party providing services and supports paid for under Vermont’s Medicaid program and Vermont’s Global Commitment to Health Waiver*):
Inspection and Retention of Records: In addition to any other requirement under this Agreement or at law, Party must fulfill all state and federal legal requirements, and will comply with all requests appropriate to enable the Agency of Human Services, the U.S. Department of Health and Human Services (along with its Inspector General and the Centers for Medicare and Medicaid Services), the Comptroller General, the Government Accounting Office, or any of their designees: (i) to evaluate through inspection or other means the quality, appropriateness, and timeliness of services performed under this Agreement; and (ii) to inspect and audit any records, financial data, contracts, computer or other electronic systems of Party relating to the performance of services under Vermont’s Medicaid program and Vermont’s Global Commitment to Health Waiver. Party will retain for ten years all documents required to be retained pursuant to 42 CFR 438.3(u).
Subcontracting for Medicaid Services: Notwithstanding any permitted subcontracting of services to be performed under this Agreement, Party shall remain responsible for ensuring that this Agreement is fully performed according to its terms, that subcontractor remains in compliance with the terms hereof, and that subcontractor complies with all state and federal laws and regulations relating to the Medicaid program in Vermont. Subcontracts, and any service provider agreements entered into by Party in connection with the performance of this Agreement, must clearly specify in writing the responsibilities of the subcontractor or other service provider and Party must retain the authority to

revoke its subcontract or service provider agreement or to impose other sanctions if the performance of the subcontractor or service provider is inadequate or if its performance deviates from any requirement of this Agreement. Party shall make available on request all contracts, subcontracts and service provider agreements between the Party, subcontractors and other service providers to the Agency of Human Services and any of its departments as well as to the Center for Medicare and Medicaid Services.

Medicaid Notification of Termination Requirements: Party shall follow the Department of Vermont Health Access Managed-Care-Organization enrollee-notification requirements, to include the requirement that Party provide timely notice of any termination of its practice.

Encounter Data: Party shall provide encounter data to the Agency of Human Services and/or its departments and ensure further that the data and services provided can be linked to and supported by enrollee eligibility files maintained by the State.

Federal Medicaid System Security Requirements Compliance: Party shall provide a security plan, risk assessment, and security controls review document within three months of the start date of this Agreement (and update it annually thereafter) in order to support audit compliance with 45 CFR 95.621 subpart F, *ADP System Security Requirements and Review Process*.

4. **Workplace Violence Prevention and Crisis Response** (*applicable to any Party and any subcontractors and sub-grantees whose employees or other service providers deliver social or mental health services directly to individual recipients of such services*):

Party shall establish a written workplace violence prevention and crisis response policy meeting the requirements of Act 109 (2016), 33 VSA §8201(b), for the benefit of employees delivering direct social or mental health services. Party shall, in preparing its policy, consult with the guidelines promulgated by the U.S. Occupational Safety and Health Administration for *Preventing Workplace Violence for Healthcare and Social Services Workers*, as those guidelines may from time to time be amended.

Party, through its violence protection and crisis response committee, shall evaluate the efficacy of its policy, and update the policy as appropriate, at least annually. The policy and any written evaluations thereof shall be provided to employees delivering direct social or mental health services.

Party will ensure that any subcontractor and sub-grantee who hires employees (or contracts with service providers) who deliver social or mental health services directly to individual recipients of such services, complies with all requirements of this Section.

5. **Non-Discrimination:**

Party shall not discriminate, and will prohibit its employees, agents, subcontractors, sub-grantees and other service providers from discrimination, on the basis of age under the Age Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972, and on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. Party shall not refuse, withhold from or deny to any person the benefit of services, facilities, goods, privileges, advantages, or benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity as provided by Title 9 V.S.A. Chapter 139.

No person shall on the grounds of religion or on the grounds of sex (including, on the grounds that a woman is pregnant), be excluded from participation in, be denied the benefits of, or be subjected to discrimination, to include sexual harassment, under any program or activity supported by State of Vermont and/or federal funds.

Party further shall comply with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166 of 2000, requiring that contractors and subcontractors receiving federal funds assure that persons with limited English proficiency can meaningfully access services. To the extent Party provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services, such individuals cannot be required to pay for such services.

6. **Employees and Independent Contractors:**

Party agrees that it shall comply with the laws of the State of Vermont with respect to the appropriate classification of its workers and service providers as “employees” and “independent contractors” for all purposes, to include for purposes related to unemployment compensation insurance and workers compensation coverage, and proper payment and reporting of wages. Party agrees to ensure that all of its subcontractors or sub-grantees also remain in legal compliance as to the appropriate classification of “workers” and “independent contractors” relating to unemployment compensation insurance and workers compensation coverage, and proper payment and reporting of wages. Party will on request provide to the Agency of Human Services information pertaining to the classification of its employees to include the basis for the classification. Failure to comply with these obligations may result in termination of this Agreement.

7. **Data Protection and Privacy:**

Protected Health Information: Party shall maintain the privacy and security of all individually identifiable health information acquired by or provided to it as a part of the performance of this Agreement. Party shall follow federal and state law relating to privacy and security of individually identifiable health information as applicable, including the Health Insurance Portability and Accountability Act (HIPAA) and its federal regulations.

Substance Abuse Treatment Information: Substance abuse treatment information shall be maintained in compliance with 42 C.F.R. Part 2 if the Party or subcontractor(s) are Part 2 covered programs, or if substance abuse treatment information is received from a Part 2 covered program by the Party or subcontractor(s).

Protection of Personal Information: Party agrees to comply with all applicable state and federal statutes to assure protection and security of personal information, or of any personally identifiable information (PII), including the Security Breach Notice Act, 9 V.S.A. § 2435, the Social Security Number Protection Act, 9 V.S.A. § 2440, the Document Safe Destruction Act, 9 V.S.A. § 2445 and 45 CFR 155.260. As used here, PII shall include any information, in any medium, including electronic, which can be used to distinguish or trace an individual’s identity, such as his/her name, social security number, biometric records, etc., either alone or when combined with any other personal or identifiable information that is linked or linkable to a specific person, such as date and place of birth, mother’s maiden name, etc.

Other Confidential Consumer Information: Party agrees to comply with the requirements of AHS Rule No. 08-048 concerning access to and uses of personal information relating to any beneficiary or recipient of goods, services or other forms of support. Party further agrees to comply with any applicable Vermont State Statute and other regulations respecting the right to individual privacy. Party shall ensure that all of its employees, subcontractors and other service providers performing services under this agreement understand and preserve the sensitive, confidential and non-public nature of information to which they may have access.

Data Breaches: Party shall report to AHS, through its Chief Information Officer (CIO), any impermissible use or disclosure that compromises the security, confidentiality or privacy of any form of protected personal information identified above within 24 hours of the discovery of the breach. Party shall in addition comply with any other data breach notification requirements required under federal or state law.

8. **Abuse and Neglect of Children and Vulnerable Adults:**

Abuse Registry. Party agrees not to employ any individual, to use any volunteer or other service provider, or to otherwise provide reimbursement to any individual who in the performance of services connected with this agreement provides care, custody, treatment, transportation, or supervision to children or to vulnerable adults if there has been a substantiation of abuse or neglect or exploitation involving that individual. Party is responsible for confirming as to each individual having such contact with children or vulnerable adults the non-existence of a substantiated allegation of abuse, neglect or exploitation by verifying that fact through (a) as to vulnerable adults, the Adult Abuse Registry maintained by the Department of Disabilities, Aging and Independent Living and (b) as to children, the Central Child Protection Registry (unless the Party holds a valid child care license or registration from the Division of Child Development, Department for Children and Families). See 33 V.S.A. §4919(a)(3) and 33 V.S.A. §6911(c)(3).

Reporting of Abuse, Neglect, or Exploitation. Consistent with provisions of 33 V.S.A. §4913(a) and §6903, Party and any of its agents or employees who, in the performance of services connected with this agreement, (a) is a caregiver or has any other contact with clients and (b) has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in Chapter 69 of Title 33 V.S.A. shall: as to children, make a report containing the information required by 33 V.S.A. §4914 to the Commissioner of the Department for Children and Families within 24 hours; or, as to a vulnerable adult, make a report containing the information required by 33 V.S.A. §6904 to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. Party will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.

9. **Information Technology Systems:**

Computing and Communication: Party shall select, in consultation with the Agency of Human Services' Information Technology unit, one of the approved methods for secure access to the State's systems and data, if required. Approved methods are based on the type of work performed by the Party as part of this agreement. Options include, but are not limited to:

1. Party's provision of certified computing equipment, peripherals and mobile devices, on a separate Party's network with separate internet access. The Agency of Human Services' accounts may or may not be provided.
2. State supplied and managed equipment and accounts to access state applications and data, including State issued active directory accounts and application specific accounts, which follow the National Institutes of Standards and Technology (NIST) security and the Health Insurance Portability & Accountability Act (HIPAA) standards.

Intellectual Property/Work Product Ownership: All data, technical information, materials first gathered, originated, developed, prepared, or obtained as a condition of this agreement and used in the performance of this agreement -- including, but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and printouts, notes and memoranda, written procedures and documents, which are prepared for or obtained specifically for this agreement, or are a result of the services required under this grant -- shall be considered "work for hire" and remain the property of the State of Vermont, regardless of the state of completion unless otherwise specified in this agreement. Such items shall be delivered to the State of Vermont upon 30-days' notice by the State. With respect to software computer programs and / or source codes first developed for the State, all the work shall be considered "work for hire," i.e., the State, not the Party (or subcontractor or sub-grantee), shall have full and complete ownership of all software computer programs, documentation and/or source codes developed.

Party shall not sell or copyright a work product or item produced under this agreement without explicit permission from the State of Vermont.

If Party is operating a system or application on behalf of the State of Vermont, Party shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Party's materials.

Party acknowledges and agrees that should this agreement be in support of the State's implementation of the Patient Protection and Affordable Care Act of 2010, Party is subject to the certain property rights provisions of the Code of Federal Regulations and a Grant from the Department of Health and Human Services, Centers for Medicare & Medicaid Services. Such agreement will be subject to, and incorporates here by reference, 45 CFR 74.36, 45 CFR 92.34 and 45 CFR 95.617 governing rights to intangible property.

Security and Data Transfers: Party shall comply with all applicable State and Agency of Human Services' policies and standards, especially those related to privacy and security. The State will advise the Party of any new policies, procedures, or protocols developed during the term of this agreement as they are issued and will work with the Party to implement any required.

Party will ensure the physical and data security associated with computer equipment, including desktops, notebooks, and other portable devices, used in connection with this Agreement. Party will also assure that any media or mechanism used to store or transfer data to or from the State includes industry standard security mechanisms such as continually up-to-date malware protection and

encryption. Party will make every reasonable effort to ensure media or data files transferred to the State are virus and spyware free. At the conclusion of this agreement and after successful delivery of the data to the State, Party shall securely delete data (including archival backups) from Party's equipment that contains individually identifiable records, in accordance with standards adopted by the Agency of Human Services. Party, in the event of a data breach, shall comply with the terms of Section 7 above.

10. **Other Provisions:**

Environmental Tobacco Smoke. Public Law 103-227 (also known as the Pro-Children Act of 1994) and Vermont's Act 135 (2014) (An act relating to smoking in lodging establishments, hospitals, and child care facilities, and on State lands) restrict the use of tobacco products in certain settings. Party shall ensure that no person is permitted: (i) to use tobacco products or tobacco substitutes as defined in 7 V.S.A. § 1001 on the premises, both indoor and outdoor, of any licensed child care center or afterschool program at any time; (ii) to use tobacco products or tobacco substitutes on the premises, both indoor and in any outdoor area designated for child care, health or day care services, kindergarten, pre-kindergarten, elementary, or secondary education or library services; and (iii) to use tobacco products or tobacco substitutes on the premises of a licensed or registered family child care home while children are present and in care. Party will refrain from promoting the use of tobacco products for all clients and from making tobacco products available to minors.

Failure to comply with the provisions of the federal law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. The federal Pro-Children Act of 1994, however, does not apply to portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, & Children (WIC) coupons are redeemed.

2-1-1 Database: If Party provides health or human services within Vermont, or if Party provides such services near the Vermont border readily accessible to residents of Vermont, Party shall adhere to the "Inclusion/Exclusion" policy of Vermont's United Way/Vermont 211 (Vermont 211), and will provide to Vermont 211 relevant descriptive information regarding its agency, programs and/or contact information as well as accurate and up to date information to its database as requested. The "Inclusion/Exclusion" policy can be found at www.vermont211.org.

Voter Registration: When designated by the Secretary of State, Party agrees to become a voter registration agency as defined by 17 V.S.A. §2103 (41), and to comply with the requirements of state and federal law pertaining to such agencies.

Drug Free Workplace Act: Party will assure a drug-free workplace in accordance with 45 CFR Part 76.

Lobbying: No federal funds under this agreement may be used to influence or attempt to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendments other than federal appropriated funds.

Attachment G
Department of Vermont Health Access
Subcontractor Compliance Form

Date: _____ Original Contractor Name: _____
Contract #: _____

Subcontractor Name: _____

Scope of Subcontracted Services:

Is any portion of the work being outsourced outside of the United States? ☐ YES ☐ NO
(If yes, do not proceed)

All vendors under contract, grant, or agreement with the State of Vermont, are responsible for the performance and compliance of their subcontractors with the Standard State Terms and Conditions in Attachment C. This document certifies that the Vendor is aware of and in agreement with the State expectation and has confirmed the subcontractor is in full compliance (or has a compliance plan on file) in relation to the following:

- ☐ Subcontractor does not owe, is in good standing, or is in compliance with a plan for payment of any taxes due to the State of Vermont
- ☐ Subcontractor (if an individual) does not owe, is in good standing, or is in compliance with a plan for payment of Child Support due to the State of Vermont.
- ☐ Subcontractor is not on the State's disbarment list.

In accordance with State Standard Contract Provisions (Attachment C), the State may set off any sums which the subcontractor owes the State against any sums due the Vendor under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided in Attachment C.

Signature of Subcontractor

Date

Signature of Vendor

Date

Received by DVHA Business Office

Date

Required: Contractor cannot subcontract until this form has been returned to DVHA Contracts & Grants Unit.